

(25,894)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 471.

RUST LAND AND LUMBER COMPANY, PLAINTIFF IN
ERROR,

vs.

ED. JACKSON, WILL SCOTT, J. F. NICHOLS, A. C. COLEMAN,
ZANDERS PARKER, AND ISOM WHITE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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Corrected Judgment

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a

Caption.

#140.

EDD JACKSON et al., Plaintiffs,

vs.

RUST LAND & LUMBER COMPANY, Defendants.

Appeal from the Circuit Court, First Judicial District of Coahoma County, State of Mississippi, December Term, 1913.

Hon. T. B. Watkins, Judge.

Judgment against defendants for \$3,600.00 and all costs.

1

Caption of the Court.

Be it remembered that on this the 1st day of December, 1913, the same being the first Monday in said month, the Honorable Circuit Court for the First Judicial District of Coahoma County, State of Mississippi, convened according to law in the courthouse in the town of Friars Point, said District, County and State aforesaid.

Present and presiding, the Honorable T. B. Watkins, Judge; W. A. Alcorn, Jr., District Attorney; H. E. Howell, Court Stenographer; J. E. Montroy, Clerk, and W. H. Fitzgerald, Jr., Sheriff.

When and where the following proceedings were had and done, to-wit:

2

Affidavit in Replevin.

STATE OF MISSISSIPPI,

County of Coahoma:

Before me, J. E. Montroy, Clerk of the Circuit Court in and for the County and State aforesaid, Gerald Fitzgerald, agent and attorney for Edd Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Sanders Parker, Isom White, who makes affidavit that six hundred (600) logs, aggregating three hundred and sixty thousand (360,000) feet of timber, all cottonwood timber, of the value of about six dollars (\$6.00) per log, or ten dollars (\$10.00) per thousand feet of timber the property of affiant's principals, was wrongfully taken within the past thirty days from affiant's principals and is now wrongfully detained by the Rust Land & Lumber Company, a foreign corporation, by their agents and attorneys and laborers, whose names are unknown to affiant, except that affiant learns that one Mr. Deshea has charge of said laborers, said timber is now situated on accretions to

Section 11, Township 28, Range 5 West, in Coahoma County, Mississippi, that affiant's principals are legally entitled to the immediate possession thereof;

Wherefore affiant prays for his principals a writ of replevin for the seizure of said property.

GERALD FITZGERALD,
Agent and Attorney for Plaintiffs.

Sworn to and subscribed before me, this the 22d day of January, A. D. 1913.

J. E. MONTROY,
Clerk of the Circuit Court.

Filed this 22d day of January, 1913.

J. E. MONTROY, *Clerk.*

Writ of Replevin.

The State of Mississippi to the sheriff or any lawful officer of Coahoma County in said State:

You are hereby commanded to take six hundred (600) logs, aggregating three hundred and sixty thousand (360,000) feet of cottonwood timber, of the value of about six (\$6.00) per log, or ten (\$10) dollars per thousand feet, now situated on accretions to Section 11, Township 28, Range 5 West, Coahoma County, Mississippi, of the aggregate value of \$3,600.00 as described in plaintiff's affidavit alleged by Gerald Fitzgerald, agent and attorney for Edd Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker, Isom White, the plaintiffs, to be wrongfully detained by the Rust Land & Lumber Company, a foreign corporation, the defendant, in said County, and to deal therewith according to law; and to summon the defendant to appear before the Circuit Court of the County of Coahoma, in the State aforesaid, at a term thereof to be held at the courthouse in the town of Friars Point, Miss., in said County and State, on the third Monday of April, A. D. 1913, to answer the action of replevin by said the plaintiffs for the unlawful detention of said property..

Given under my hand and official seal, and issued this the 22d day of January, A. D. 1913.

J. E. MONTROY,
Circuit Clerk, Coahoma County, Mississippi.

Sheriff's Return on Writ of Replevin.

Executed the within writ of replevin by levying on and taking into my possession a certain lot of cottonwood logs in the raft and floating on a body of water commonly known as Old River near Stovalls & Sons West End Plantation, in Coahoma County, State of

Mississippi, there being 562 logs by actual count estimated to contain about 3,600 feet of timber of the value of \$10.00 per thousand being a total value of \$3,600.00.

The above property being levied on as the property of the within named plaintiff's Edd Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isom White.

This 8th day of February, 1913.

W. H. FITZGERALD, JR., *Sheriff*,
By N. A. CARTLEDGE, D. C.

Sheriff's Fees:

Ex.	\$2.00
Counting Logs	\$3.00
Serving Sums	\$2.00
	<hr/>
	\$7.00

Returned and filed this the 10th day of February, 1913.

J. E. MONTROY, *Clerk*.

5

Defendant's Replevin Bond.

STATE OF MISSISSIPPI,
County of Coahoma:

Be it known, that we, Rust Land & Lumber Company, principal, and United States Fidelity & Guaranty Co. of Baltimore, Md., Sureties, agree and bind ourselves to pay Edd Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isom White, Plaintiffs, the sum of \$7,200.00 unless the said principal obligor and defendant shall have certain personal property, to-wit: 562 logs of cottonwood timber, aggregating 360,000 feet of the value of about \$6.00 per log or \$10.00 per 1,000 feet, before the Circuit Court of Coahoma County, to be held at Friars Point, Mississippi, on the third Monday of April, 1913, to satisfy the judgment of said court in an action of replevin by said plaintiffs against said defendant for said property.

Witness our signatures, this 10th day of February, 1913.

RUST LAND & LUMBER COMPANY,

By F. A. MONTGOMERY,

Ag't and Attorney.

UNITED STATES FIDELITY & GUARANTY
CO., OF BALTIMORE, MD.,

By J. O. LAMPKIN, *Agent*.

I approve the above bond this the 10th day of February, 1913.

W. H. FITZGERALD, JR.,

Sheriff of Coahoma County,

By W. N. PALMORE, D. C.

Filed 10th day of February, 1913.

J. E. MONTROY, *Clerk*,

By J. R. ALCORN, D. C.

Declaration.

STATE OF MISSISSIPPI,
County of Coahoma:

In the Circuit Court, First Court District, April Term, 1913.

#140.

EDD JACKSON et al., Plaintiffs,

vs.

RUST LAND & LUMBER COMPANY, Defendants.

Come Edd Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isom White, and complain of the Rust Land & Lumber Company, a corporation organized under the laws of the State of Wisconsin, with its domicile at — in said State, in an action of repleving for that, whereas, heretofore, to-wit: On or about January 21st, 1913, the said defendant wrongfully seized and took from the possession of plaintiffs, without authority of law or right, certain personal property, to-wit: 600 cottonwood logs, averaging about 600 feet to the log, aggregating 350,000 feet of timber, the said logs being of the value of about \$6.00 each, on an average, and the said timber being of the value of \$10.00 per 1,000 feet, and still wrongfully detains said property.

Plaintiffs aver that they are entitled to recover the said property and also to recover of the defendant the sum of \$2,000.00 damages for the said wrongful taking thereof;

Wherefore plaintiffs sue and demand judgment for the said value of said timber, to-wit: \$3,600.00 and said damages, to-wit: \$2,000.00 and all costs of suit in this behalf.

MAYNARD & FITZGERALD,
Attorneys for Plaintiffs.

Filed 15th day of March, 1913.

J. E. MONTROY, *Clerk,*
By J. R. ALCORN, *D. C.*

7

Plea.

STATE OF MISSISSIPPI,
Coahoma County:

In the Circuit Court, December Term, 1913.

#140.

EDD JACKSON et al.

vs.

RUST LAND & LUMBER COMPANY.

Now comes the said defendant, the Rust Land & Lumber Company, and for plea to the declaration filed against it herein, says that it is not guilty of the wrongs and injuries whereof the said plaintiff has in their said declaration herein complained against it, nor of any of them, and of this, the said defendant, puts itself upon the Country.

WILSON & ARMSTRONG,
MONTGOMERY & MONTGOMERY,
Att'ys for Defendant.

Filed December 1st, 1913.

J. E. MONTROY, *Clerk*,
By J. R. ALCORN, *D. C.*

7½

Circuit Court, First District.

STATE OF MISSISSIPPI,
Coahoma County:

#140.

EDD JACKSON et al., Plaintiffs,

vs.

RUST LAND & LUMBER COMPANY, Defendant.

It appearing to the attorneys for both the plaintiff and defendant, in the above styled cause, that there are certain maps now on file in the Circuit Court, which were introduced in evidence, in the above styled cause, and that it will be almost impossible for the Circuit Clerk, in making up the record for the Supreme Court, to get correct copies made, to scale, so that they will be understandable in the Supreme Court, and it appearing that the only feasible plan to have the said maps in the Supreme Court would be to allow the originals to be sent down with the record by the clerk, and to be

used in the Supreme Court, as though copies had been made, it is therefore hereby agreed, by and between all parties to this suit, both the plaintiff and defendant, that the following original maps, introduced in the trial of the above styled cause, may be sent down by the Clerk of the Circuit Court, with his record, of the above styled cause, to the Supreme Court of the State of Mississippi, and that the maps there may be received and accepted as though copies had been made, and all matters of formality, in the lack of copies, are hereby waived, to-wit;

Map of Township 28, Range 4 West, State of Mississippi, being Exhibit No. —.

Map of Township 28, Range 5 West, State of Mississippi, being Exhibit No. —.

Map of Township 4, South, Range 4 East, State of Arkansas, being Exhibit No. 23.

Map of Township 29, Range 4 West, State of Mississippi, 7¾ being Exhibit No. 24.

Map of Township 29, Range 5 West, State of Mississippi, being Exhibit No. 25.

Map of Township 28, Range 4 West, State of Mississippi, being Exhibit No. 26.

And also a certain map drawn by L. W. Mashburn, Engineer, being exhibit No. — to the stenographer's notes.

Witness the hands of the attorneys for both plaintiffs and defendants, this the 31st day of August, 1914.

MONTGOMERY & MONTGOMERY,

Of Counsel for Rust Land & L'r Co.

MAYNARD & FITZGERALD,

Attorneys for Plaintiffs.

Endorsed on the back of said agreement is the filing thereof, which said filing is in words and figures as follows, to-wit;

Filed October 14th, 1914.

J. E. MONTROY, *Clerk.*

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EXHIBIT NO. 1 TO PLAINTIFF'S TESTIMONY.

STATE OF MISSISSIPPI,

County of Coahoma:

In the Circuit Court, First District, December Term, 1913.

#140.

EDD JACKSON et al.

VS.

RUST LAND & LUMBER COMPANY.

In order to expedite the trial of the above styled cause and prevent further expense in regard to the producing of certified copies of

deeds, etc., it is hereby agreed by and between the attorneys for the plaintiffs and the attorneys for the defendant that the title in fee simple to lots 1 to 9 inclusive, of Section 11, Township 28, Range 5 West, in the County of Coahoma, *County* and State of Mississippi, is vested in Charles McGee, King & Anderson, Joe Williams, and Ellen Jackson, and that the plaintiffs herein had the right and authority from said owners to cut the standing timber on said lots within the calls of said owners' deeds.

And it is further agreed that the title in fee simple to Section 22 and Section 23, all in Township 4, South Range 4 East, in Phillips County, Arkansas, is vested in the Rust Land & Lumber Company, Defendants in this cause. It is further agreed by and between the attorneys for both complainants and defendants that this agreement may be introduced in evidence and used in the trial of said cause as evidence in lieu of the original deeds of conveyances and in place instead thereof, and shall constitute valid title in the aforesaid owners to the lands as above described.

Signed by attorneys for both plaintiffs and defendants, this the 29th day of November 1913.

MAYNARD & FITZGERALD,

Att'ys for Plaintiffs.

WILSON & ARMSTRONG,

MONTGOMERY & MONTGOMERY,

Att'ys for Defendant.

Filed December 1st, 1913. J. E. Montroy, Clerk.

9 STATE OF MISSISSIPPI,
Coahoma County:

In Circuit Court, December Term, A. D. 1913, First District.

EDD JACKSON et al.

vs.

RUST LAND & LUMBER COMPANY.

Upon the trial of the above entitled cause, the following evidence was introduced and proceedings had, to-wit:

ZANDERS PARKER, a witness introduced for and on behalf of the plaintiff, having been first duly sworn, testified as follows, to-wit:

Q. Where do you live Zanders?

A. I live down on Mr. Williams' place.

Q. How long have you lived down there?

A. I have been there for 19 years.

Q. You are the plaintiff here in this suit against the Rust Land & Lumber Company for the unlawful taking of some logs from you and your co-plaintiffs by the Rust Land & Lumber Company?

A. Yes sir.

Q. Just tell the jury there now, do, or did you cut those logs, did you and your co-plaintiffs cut those logs?

A. Yes sir.

Q. Where did you cut them?

A. We cut them logs down the levy and Dustin Pond.

Q. Under what right did you cut them?

A. Had a written contract.

Q. From whom?

A. Mr. Anderson, Ellen Jackson and Joe Williams.

Q. Who were they, what lands did they own?

A. They owned this portion of it, they owned up here in Section 11.

10 Q. Now on this land, how long have you been knowing this land on which you cut this timber?

A. Seventeen years.

Q. Who has been in actual occupation of that land during all of that time claiming it as theirs?

A. Same parties claiming it now.

Q. That you bought the timber from?

A. Yes sir.

Q. Did you ever know it to be disputed by any one at all?

Defendant objects.

Q. What, if any, dispute about it, did you ever hear?

A. No sir, none at all.

Q. Who claimed to own that land to you there at that time, adversely to the world?

A. King and Anderson, Ellen Jackson and Joe Williams.

Q. The parties you bought the timber from?

A. Yes sir.

Q. Where did they direct you?

A. Across the levy between Pecan Lake and Dustin Pond.

Q. Is that where you cut it?

A. Yes sir.

Q. How long were you in cutting that timber?

A. Near about three weeks.

Q. Were you ever disturbed in the cutting of it?

A. No sir, not until the——

Q. Just before the filing of this suit?

A. Yes sir the time the sheriff of Helena——

Q. Where were you when you saw him?

A. I was home on the South side of the levy.

Q. On the Mississippi side of the levy?

A. On this side of the levy, yes sir.

Q. What did they say to you when they came in?

A. They scame down there, Mr. De Sha——

Q. Who is he?

11 A. He left here a few minutes ago, he — supposed to be representing the Rust Land & Lumber Company.

Q. Tell what he told you then?

A. He came and brought warrants from Phillips County, Arkan-

sas, and when he came, he told us that if we would give the timber up, or else come on with them; of course when he came and brought the high sheriff, rather than go with them, they taken it way from us.

Q. What did you do then?

A. We went to work and hired to Mr. De Sha.

Q. At whose advice?

A. Lawyer Fitzgerald, your advice.

Q. What, if anything, did you do at that time towards getting out writs of replevin for the timber?

A. Well, we applied to you.

Q. To get the writs out?

A. Yes sir, the writs.

Q. Of replevin for the logs?

A. Yes sir.

Q. Did you willingly give up this timber to them?

A. No sir.

Defendant objects.

Court sustains the objection.

Plaintiff excepts.

Q. In what way did they take it from you, by force or not?

A. By force, we wasn't willing to give it up; come there with the high sheriff from Phillips County; we were satisfied we were right, but when the high sheriff come, couldn't help it, said it would be *in* compelled to give it up when the high sheriff come, he come and took it away from us.

Q. You say he did have a warrant for you?

A. Yes sir, for all of us.

Q. Said he did, did he?

A. I saw it.

12 Q. Among the owners that you failed to mention a while ago in that section was Charley McGhee? Does he own a piece?

A. Yes, sir, he is connected with them, too.

Q. Do those parties own all of Section 11 and the accretions?
(No answer.)

Cross-examination:

Q. What is your name?

A. Zanders Parker.

Q. You have a contract for the timber yourself?

A. Yes sir.

Q. Where is your contract?

A. Well, I thought I left it in lawyer Fitzgerald's office, but he say I didn't leave it there, and I couldn't tell you just exactly where it is.

Q. With whom did you contract?

A. Isom White, he is the head contractor, he contracted with Mr. Anderson for the timber.

Q. Well now, did you cut all of the timber yourself, or did you and these other plaintiffs all own it jointly?

A. It was kind of a joint thing.

Q. What?

A. Kind of jointly.

Q. You all had a written contract with the owners?

A. Yes sir.

Q. And you jointly owned it, you and these other plaintiffs?

A. How's that?

Q. You all jointly owned the timber; an enterprise jointly entered into by all of you?

A. Yes sir, but there was only three men in the time of the whole thing, Isom White, Jeff Nichols and Scott.

Q. What interest did you have in the timber yourself?

A. Isom White taken me in there with him, an interest.

Q. You had an interest with Isom?

A. Yes sir.

Q. That was under a contract between you and Isom?

A. Contract between I and Isom.

Q. Yes?

13 A. Yes sir, but my named showed up in this contract.

Q. Now, where was this timber cut?

A. Where was the timber cut?

Q. With reference to the body of water between the island and the Mississippi shore?

A. Where was it cut?

Q. Yes?

A. It was cut between Pecan Lake and Dustin Pond.

Q. What do you call Pecan Lake?

A. There is some people call it Old River, it is Pecan Lake.

Q. That what you call Old River?

A. Some people do.

Q. That's right along the present high bank of the river isn't it?

A. No sir,—there is a levy along the east side of that lake.

Q. Levy along the south side of the lake, and how is the bank of that lake, the south bank very high bank?

A. Might be in some places, but less in some places, and some places a little steep.

Q. That lake you call Pecan Lake is in the shape of a horse shoe isn't it?

A. Yes, great big lake in the shape of a horse shoe, seven or eight hundred feet wide, something like that. Well sir, I suppose it is that wide.

Q. That is your best judgment seven or eight hundred feet wide?

A. Yes sir.

Q. What is the length of it?

A. I don't know sir.

Q. Several miles long isn't it?

A. No sir, I don't know as it is several miles long.

Q. Two or three miles isn't it?

A. It may be.

Q. It is all of the way from eight to twenty feet deep, isn't it?

A. I don't know sir, how deep it is.

14 Q. You never did measure the depth of it?

A. No sir.

Q. And that's the only water between you and what they call Horse Shoe Island, isn't it? Between the Mississippi shore and what they call Horse Shoe Island, that's the only water between the levy and the island?

A. Between the levy and the Horse Shoe Island.

Q. Yes.

A. No sir, Dustin Pond.

Q. This Dustin Pond, that is just a little body of water after the sand bar?

A. It is supposed to be the old river.

Q. You are just supposing about whether it is the old river?

A. I say, it is supposed to be.

Q. How far is Dustin Pond, how far from the levy?

A. About a half a mile.

Q. That runs in a lake too, you speak of?

A. Not necessarily.

Q. The timber doesn't run in this lake at all?

A. No sir.

Q. Doesn't run into anything, just starts out with no outlet?

A. In time of high water.

Q. In low water, there is no outlet at all?

A. No sir, it don't run.

Q. Not in low water?

A. No sir.

Q. Was the timber you cut between that pond and the lake you spoke of?

A. Yes sir.

Q. What sort of timber was growing in there?

A. What sort?

Q. Yes?

A. We cut cottonwood.

Q. How far from the big Lake was the timber when you cut it?

15 A. We started on Pecan Lake bank.

Q. The timber on Pecan Lake, was that as high as the timber was further north from there, larger timber, or smaller as you went north?

A. No sir, about an average thing.

Q. What I am trying to get at whether the timber on the bank of this big lake, was or not smaller than the timber over further?

A. No sir, about one average thing from this lake, Dustin Pond, the timber there about the same, but when you cross this little Dustin Pond, the timber get heavier going north.

Q. After you get across?

A. I say after you cross there.

Q. The timber is still heavier on the north side of Dustin Pond?

A. Yes sir.

Q. You know where the main old island is?

A. Yes sir, I know what is called the Island.

Q. You know where the Mississippi River is?

A. Yes sir.

Q. How far is the river from the levy?

A. I don't know sir, I suppose, to be about three miles, I don't know exactly.

Q. You don't know where the original Arkansas side is do you?

A. I know where I was always told it is.

Q. How long have you lived down there in that neighborhood?

A. About 19 years.

Q. Now, you were north of this lake when,—who was it, came,—

Mr. De Sha came there with an officer?

A. Mr. De Sha.

Q. When he came there with an officer, you were north of that lake?

A. Yes sir on this side of the levy.

Q. On the outside of the levy?

A. Yes sir.

Q. Between the levy and the river?

A. No sir, on this side of the levy.

Q. You cut the timber outside of the levy?

16 A. We cut the timber inside of the levy.

Q. What do you mean by inside?

A. Between the two levies, between the two States levies, I called that inside of the levy.

Q. Two levies?

A. One here and one in Arkansas, that's between the two levies.

Q. You mean between the Arkansas and the Mississippi levy is where you cut the timber?

A. I mean between the two levies, where we cut the timber, we cut the timber between Dustin Pond and Pecan Lake.

Q. After the levy was still further south than Pecan Lake, Mississippi levy?

A. Still further south, well the Mississippi levy run right down opposite of Pecan Lake.

Q. What I want to get at is, the timber was between the Mississippi River and the Mississippi levy when you cut it?

A. Well, it was between where the river is now.

Q. That's what I am talking about, between where the river is now and the Mississippi levy?

A. Yes sir, we cut it between Pecan Lake and Dustin Pond.

Q. It was there that these gentlemen came to you?

A. They came to me on this side of the levy, over home there where I live at.

Q. Where was this timber then?

A. Where we cut it?

Q. You were not there where the timber was when they came to you?

A. No sir.

Q. And who was it *became* besides Mr. De Sha?

A. Mr. De Sha, I don't know the sheriff's name, but his name was on them writs they brought.

Q. Somebody representing himself as the high sheriff of De Sha County?

A. No sir, I di-n't say of De Sha County.

Q. How did you know?

A. He said he was high sheriff, and had his name on the warrants high Sheriff.

17 Q. How do you know?

A. I read it.

Q. What did the warrant say?

A. I couldn't recall to remembrance right now what it did say, but I know it forbids us for cutting any more timber over there under his name.

Q. And this high Sheriff showed you that writ, did he?

A. Yes sir.

Q. Give you a copy of it?

A. A copy of it.

Q. Yes.

A. It was a piece of paper was typed off by the type whoever was—

Q. Where is the paper that he gave you?

A. In lawyer Fitzgerald's office, I reckon, if they ain't there, Joe Nichols got it, I reckon, but I think they are in lawyer Fitzgerald's office.

Q. And this man that said he was the high sheriff had a writ commanding you not to cut any more timber over there, that right?

A. Yes sir, said if we cut any more over there, either remove that what we already cut, he would put us in jail.

Q. Well, now then, did the high sheriff tell you to turn that timber over to Mr. De Sha?

A. Yes sir, he was ready to say, if Mr. De Sha said so, for Mr. De Sha said if we took the timber, we could just go.

Q. Did you turn it over to Mr. De Sha?

A. Yes sir, we didn't bother it anymore.

Q. Did he pay you anything for cutting it?

A. No sir.

Q. What sort of an agreement did you make with him about rafting it you and these other parties?

A. We were to put it out to the lake and raft it for a dollar a thousand.

Q. Out into the river for a dollar a thousand?

A. Into the lake.

18 Q. Well, was the water up then, or low water stage then?

A. When.

Q. When this conversation occurred?

A. Well, the water was just rising, coming in there then.

Q. Hadn't gotten over to where the timber was cut?

A. It had reached some of it.

Q. And you and all of these other plaintiffs contracted with them to raft it into the lake, to put it into the lake in a raft for a dollar a thousand?

A. Yes sir.

Q. And was that contract in writing or verbal?

A. Verbal.

Q. And then you proceeded to do that, didn't you?

A. Yes sir.

Q. You remember the day of this conversation?

A. Do I remember the date?

Q. Yes?

A. No sir, not exactly.

Q. Well, how long was it before you brought this suit?

A. Just as soon as Mr. De Sha come with the high sheriff of Phillips County and demanded us not to bother the timber any more he would put us in jail, we went straight away.

Q. How long was that before you brought this suit, how long after that conversation before this suit was brought?

A. Before it was put in?

Q. Yes?

A. Right away next day.

Q. You already had put the timber into a raft when you brought the suit hadn't you?

A. No sir.

Q. Hadn't done anything at all about rafting it?

A. No sir, we were just preparing to go with them then.

Q. After these gentlemen had had this conversation with you, how long was it before you brought suit, you brought suit for the possession of the timber?

A. They came like today and went straight away next day and put the case into lawyer Fitzgerald.

19 Q. I understand but you didn't bring this suit the next day?

A. The suit?

Q. How long did you work on getting the timber ready for rafting after that conversation?

A. Oh, whenever Mr. De Sha come there, and we commenced to rafting as soon as we commenced floating.

Q. How long after that, how long did you work on it getting it rafted and getting ready to be rafted and everything?

A. Wasn't no getting ready to it.

Q. How long did you work on it before you brought this replevin suit?

A. I didn't work at it any more, when the sheriff come from Helena demanded us to quit, we went straight away then to put the suit in lawyer Fitzgerald.

Q. After you reported the matter to Mr. Fitzgerald, you still went and worked on the timber?

A. We hired to him, yes, sir.

Q. How long did you work on it then?

A. I don't know exactly how long it was, just to the spot.

Q. Well, was it a month?

A. Just about a month, I suppose.

Q. You worked on it then after that for about a month rafting it and getting it ready to be rafted before the writ of replevin was levied on the timber, didn't you?

A. Yes, sir.

Q. And where was the timber when this writ of replevin was *was* levied on it, it was in the lake wasn't it?

A. On this bank of Pecan Lake.

Q. On Pecan Lake on this Mississippi bank?

A. Larger portion of it, few logs.

Q. Was it in the shape of a raft?

A. Yes, sir, cribbed up and boxed.

Q. And to carry out all of the contract with Mr. De Sha, all you contracted to do for a dollar a thousand was to carry it back down Pecan Lake, into the high water into the river.

A. We were to put it into the lake.

Q. You were not to carry it to the river?

20 A. No, sir, not for a dollar a thousand.

Q. Had you about carried out your contract with him when the writ was levied by you?

A. Yes, sir, mighty near it.

Q. And you had it floating on the Mississippi bank into Pecan Lake?

A. Yes, sir, on this bank, yes, sir, Mississippi bank.

Q. This Pecan Lake, is it sometimes called Horse Shoe Lake too?

A. I never know it to be called Horse Shoe Lake.

Q. Sometimes called Old River though isn't it?

A. Some people might, some people.

Q. Don't nearly everybody down there call it Old River?

A. Portion of them, no, sir, portion of them.

Q. Well, you know where Section 10 is?

A. Section 10?

Q. Yes?

A. Yes, sir.

Q. That is on the north side, north of Pecan Lake, isn't it?

A. North?

Q. Yes?

A. No, sir, Section 10 isn't north of Pecan Lake, Section is south of Pecan Lake.

Q. Do you know what the number of the Sections are that Mr. Anderson and these people sold you the timber on?

A. Section 11.

Q. What part of Section 11?

A. What part of Section 11?

Q. Yes, do you know?

A. Say what part of Section 11?

Q. Yes?

A. All I know, it is just Section 11, all I know, Judge.

Redirect examination :

Q. I will ask you to point out on this map, taking the map to be correct, if it looks correct to you, where you cut that timber?

Defendants objects as original.

21 (The Court :) I overrule the objection.

Defendant excepts.

Q. Where did you cut the timber?

A. I cut it right there, right in there.

Q. Cut it,—just make a mark there with a pencil where you cut it?

A. Cut it right in here.

Q. Now, you say, Zanders, that you went back and helped to raft this timber?

A. Yes, sir.

Q. On whose advice did you do that?

A. On your advice.

Recross-examination :

Q. Now you explained all of this circumstance to your lawyer, Mr. Fitzgerald before you went back and did this work, did you?

A. Yes, sir, I, after the case was turned in here.

Q. You explained it all to him, and by his advice, you went back and did this work?

A. Yes, sir.

Q. Now, this lasted, you say, about a month?

A. Yes, sir.

Q. Now, the timber was cut north of Pecan Lake, that is north, is it?

A. North,—yes, sir, of Pecan Lake.

Q. Now, the levy runs on the south side of Pecan Lake, very close to it, doesn't it?

A. Yes, sir.

(Fitzgerald :) The high water was coming up very rapidly, then, wasn't it?

A. Yes, sir.

ISOM WHITE, a witness introduced for and on behalf of the plaintiff, having been first duly sworn, testified as follows, to-wit:

Q. This is Isom White is it?

A. Yes, sir.

22 Q. Where do you live? .

A. Live on the west end of Stovall, just opposite west of Stovall Plantation.

Q. Do you know Section 11, Township 28, Range 5 West in Coahoma County, Mississippi?

A. Yes, sir.

Q. Who is it owned by?

A. Joe Williams, Charlie McGhee, King and Anderson, and Ellen Jackson.

Q. From whom did you buy certain timber down there and cut it between Dustin Pond and Pecan Lake?

A. Bought it from Joe Williams, King and Anderson, Ellen Jackson and Charlie McGhee.

Q. Did you cut that timber down there yourself?

A. Yes, sir.

Q. Do you know Zanders Parker?

A. Yes, sir.

Q. What, if any, interest did he have in the timber?

A. Half interest.

Q. What did these other boys, the plaintiffs in this suit, what interest did they have in the timber?

A. Half interest.

Q. You all interested together equally?

A. Yes, sir.

Q. Who pointed out the place for you where you should go and cut this timber?

A. King and Anderson, Ellen Jackson, and Jo and Henry Williams.

Q. Did they authorize you to go and cut it?

A. Yes, sir.

Q. Where you cut this timber, you had been in notorious, adverse and uninterrupted possession of this land where you cut this timber for about ten years past?

Defendant objects to that, because it is a conclusion.

(The Court:) I overrule the objection.

Defendant excepts.

Q. Who has been in the possession of this land?

23 A. Charlie McGhee and Joe Williams.

Q. Claiming it as their own?

A. Yes, sir.

Defendant objects to that.

(The Court:) I sustain the objection.

Plaintiff excepts.

Q. Well now, what acts of possession, if any——

(Montgomery:) I move to exclude the last question and answer, "claiming it as their own."

(The Court:) I sustain the motion; gentlemen, you will not consider the answer to that question.

Plaintiff excepts.

Q. What, if any, acts of possession, Isom did Charlie McGhee, King and Anderson, and Ellen Jackson and Joe Williams, the owners in Section 11, with whom you had a contract to cut this timber, exercise over this land where you cut this timber?

A. They had claimed it for twelve years to my knowledge?

Q. What had they done in there, if anything?

A. Yes, sir, got them some fire wood off of there.

Q. What else?

A. That's all.

Q. Had they sold any timber in there that you know of?

A. Yes, sir.

Q. They had sold timber?

A. Charlie McGhee had sold some.

Q. Who did he sell it to?

A. Mr. Hull.

Q. How long ago has that been?

A. It's been about twelve years.

Q. Has Charlie and the rest of them been in possession there since then?

A. Yes, sir.

Q. Do those parties that you named own all of Section 11?

A. Yes, sir.

(Montgomery:) We object to that, because it isn't a competent way to prove ownership.

24 (The Court:) I sustain the objection.

Plaintiff excepts.

Q. Isom, how many logs did you and your co-plaintiffs here cut there?

A. About 565.

Q. How many thousand feet of timber was in those logs?

A. About 365,000.

Q. Did you scale them up?

A. Yes, sir.

Q. How many was in it?

A. About 365.

Q. 365,000?

A. Yes, sir.

Q. 365?

A. Yes, sir.

Q. What was the value of that timber cut down there, that 365,000 feet, what was the actual cash market value of the timber there?

A. Cash market value been about seven——

(Montgomery:) We object unless the witness tells what he knows about it.

(The Court:) I sustain the objection.

Plaintiff excepts.

Q. Did you know the value of the timber?

A. Yes, sir, been about \$7,000.00.

Q. Did you know the value of timber, generally, at that time?

A. Yes, sir.

Q. Situated that way?

A. Yes, sir.

Q. What was the value of that timber?

A. Value of that timber was about——

Q. How much a thousand?

A. The value of it was \$10 a thousand.

Q. In the condition it then was?

A. Yes, sir.

25 Q. Now, after you had cut it down, what was the value of it per thousand stumpage, if you know?

A. \$3.50.

Q. Isom, how much did it cost to cut down and put in the condition it is in, this 365,000 feet of timber?

A. Cost us \$3.50 in money, outside of other preparations we had to make.

Q. Outside of your labor?

A. Yes sir.

Q. What was the work worth to cut down the 360,000 feet?

A. What was the work worth? Work was worth every bit in grain \$365.00.

Q. \$365.00?

A. Yes sir, to cut that timber.

Q. Now, after you had cut the timber down, state what occurred about anybody getting it?

A. After we had cut the timber down, why Mr. DeSha and the high sheriff.

Q. Who is Mr. DeSha?

A. He is the agent, supposed to be over the Three State Lumber Co.'s Land.

Q. Is that the Rust Land & Lumber Company?

A. Yes sir.

Q. Or the Three States Lumber Company.

A. I always call it the Free State Lumber Company.

Q. What did he say about it?

A. He said we had trespassed on the Rust Land & Lumber Co.'s timber and he wanted it and must have it and did bring the sheriff, had a summons a warrant on us.

Q. Where were you when they served the warrant on you, or whatever they served?

A. I was in Coahoma County on Section 10.

Q. On Section 10?

A. Yes sir.

Q. Where is Section 10?

A. Jake Price's.

26 Q. With reference to Section 11?

A. Yes sir.

Q. Where is it with reference to Section 11?

A. With reference to Section 11?

Q. Near it or far from it?

A. Just adjoining it.

Q. What county were you in, you say?

A. In Coahoma County.

Q. What demand did they make on you for it, and what did they say to you about it?

A. Well, they just said they must have it, had to have it.

Q. Well, what did they say if you didn't let them have it?

A. Said if we didn't let them have it, why, of course, they were going to put us in jail.

Q. Did you turn it over to them willingly?

A. No sir, I didn't turn it over to them willingly.

Q. What did you do immediately when they took charge of the timber?

A. When they took charge of the timber, of course, he explained to me that this was the sheriff of Phillips County, Arkansas, by me being a negro man, I just give down, had to give down.

Q. Well, what did you do then?

A. Why, I hired myself to him.

Q. To do what?

A. To run out some timber to the edge of Pecan Lake.

Q. What did you do with reference to bringing a suit about it?

A. I worked on until I got timber rafted, and after I got the timber rafted, why, of course, I pleaded to lawyer Fitzgerald for relief.

Q. After he demanded the timber of you, how long was it before you came to your lawyer about it?

A. About, between five or six days, between five and six days.

Q. By whose advice did you hire to this man?

A. By Lawyer Fitzgerald's advice.

Q. Why did you hire to him to raft the timber?

27 A. Why, because I wanted to raft it, so I could get it together, because the water was pushing right behind: I know if I got it rafted, why, of course, I might get some protection.

Q. What would have been the cost, what would have become of that timber unrafted?

A. Just been gone every which a way and lost.

Q. And the water was then rising rapidly?

A. Yes sir, the water was rising rapidly.

Q. Now Isom, in beginning your cutting over there on this land, how far from Pecan Lake did you start to cutting?

A. Started just about, between fifty or sixty feet from the bank of Pecan Lake.

Q. Then, how far away from Pecan Lake did you cut, on towards Dustin Pond?

A. Cut just about a quarter of a mile.

Q. Now, what land, how broad a space did you cut out?

A. We cut in about, between quarter of a mile.

Q. Quarter of a mile square?

A. Yes sir.

Q. Now, I will ask you to show on this map, if it appears like the situation down there, I will ask you to show where you cut that timber, just take a pencil here and show the jury here, just take this pencil and mark now where you cut that timber with reference to Pecan Lake and Dustin Pond?

A. I cut that timber, right in here.

Q. Alright, now where did you begin on Section 11?

A. Where did I begin?

Q. Yes?

A. I begin right in here, begin right in there and cut.

Q. Now, let me put the map,—this is north, now hold this down, this is north, this is south, and this is east and this is west?

A. Yes sir.

Q. Now, show me here where you begin to cut this timber?

A. This is north you say?

28 Q. Taking this as Pecan Lake, where did you begin to cut?

A. I begin to cut that timber right in here.

Q. Right in there, mark it.

(Witness indicates with pencil.)

Q. Who lives right across the levy there on Section 11 from this land?

A. Right at the levy on Section 11?

Q. Yes?

A. Ellen Jackson, Charlie McGhee.

Q. The owners from whom you bought this timber?

A. Yes sir.

Q. How long have they been living there on this land?

A. They have been living there for twenty-two years to my knowing.

Q. Have they got all of that in cultivation over there on that side?

A. On the inside of the levy?

Q. Yes?

A. Yes sir.

Q. How long have they had that in cultivation there, and been living on it?

A. Been living on it twenty-two years to my knowing. Was living there in this Country in '89.

Cross-examination:

Q. Who did they buy this timber from?

A. King and Anderson and Jo- Williams, Charlie McGhee and Ellen Jackson.

Q. Who did you talk to about it?

A. King and Anderson and Ellen Jackson and Joe Williams.

Q. Who got up the trade?

A. Who Joe Williams got up the trade to sell it.

Q. Who did he go to see about it?

A. I don't know sir, who he went to see about it?

Q. How did you get in on it?

A. Got in on it by buying it from Joe Williams and Mr. King and Anderson.

29 Q. What did you pay for the stumpage?

A. Three and a half.

Q. How did you go over to the place?

A. Went across Pecan Lake in a skiff.

Q. How wide is Pecan Lake where you went across it?

A. It might be about three hundred yards wide, probably.

Q. This was pretty good size timber over there the way you scaled it up?

A. Well, it was good average size.

Q. About like the rest of the timber over there on that island?

A. Yes sir.

Q. How far from Pecan Lake do you call it that you begin to cut?

A. Begin to cut on Pecan Lake, just about between fifty or sixty yards from the bank of Pecan Lake.

Q. This Pecan Lake, is that the same place as some of the folks down there call Old River?

A. Yes sir, I suppose it is, when I come to know about it, they called it Pecan Lake.

Q. You have heard some of them call it Pecan Lake?

A. Yes sir.

Q. The same body of water?

A. Yes sir.

Q. How far is Dustin Pond from the bank of Pecan Lake?

A. Dustin Pond is a little over a quarter of a mile from Pecan Lake to the bank of Dustin Pond.

Q. There is cultivated land you are talking about, that is all south of this body of water they call Pecan Lake?

A. Yes sir, it is over on this side.

Q. And how large a body of water is Dustin Pond?

A. Dustin Pond is a good large body of water.

Q. How wide is it?

A. It looks to be about, as near as I can come at it, looks to be about, somewhere between two hundred and fifty yards wide, or a little wider.

Q. How long was it after Mr. DeSha and the high sheriff of Phillips County, came there to see, that you went to see Mr. Fitzgerald?

30 A. Between five or six days.

Q. And you explained to Mr. Fitzgerald how you got this timber, did you?

A. Yes sir.

Q. Told him who you bought it from?

A. Yes sir.

Q. Told him the same thing you have testified to here on the stand?

A. Yes sir.

Q. And then after you talked with him, you went back, and helped Mr. DeSha get the timber out?

A. Yes sir.

Q. How long did you work with Mr. DeSha after you talked to Mr. Fitzgerald the first time?

A. Worked for him about a couple of weeks.

Q. Getting the timber together and rafting it down in this water you call Pecan Lake, is that right?

A. Yes sir.

Q. What kind of timber was this?

A. Cottonwood.

Q. All of it Cottonwood?

A. All of it cottonwood.

Q. What was the size of those trees?

A. Average from 24 inches up.

Q. Up to what, what was the big ones?

A. Some of them big ones would go as much as forty inches; some of them.

Q. Would they go that high?

A. Some of them would.

Q. Any of them go higher than that?

A. No sir, I don't know of any of them going higher than that.

Q. About 24 to 40 inches?

A. Yes sir.

31 Q. Who was there with Mr. DeSha and the sheriff, anybody else?

A. No sir, Mr. Bowie was there.

Q. Who else?

A. That was all.

(Fitzgerald:) I now want to introduce the agreement between counsel and myself as to the owners of the land, the original lands in Arkansas and the lands in Mississippi, which speaks for itself.

The said agreement is by the stenographer marked Exhibit No. 1 and is in words and figures following to-wit:

32

EXHIBIT No. 1.

STATE OF MISSISSIPPI.

County of Coahoma:

In the Circuit Court, First District, December Term, 1913.

EDD JACKSON et al.

v8.

RUST LAND & LUMBER COMPANY.

In order to expedite the trial of the above styled cause and prevent further expense in regard to the producing of certified copies of deeds, etc., it is hereby agreed by and between the attorneys for the plaintiffs and the attorneys for the defendant that the title in fee simple to lots one to nine inclusive, of Section 11, Township 28, Range 5 West, in the County of Coahoma and State of Mississippi, is vested in Charles McGee, King and Anderson, Joe Williams and Ellen Jackson, and that the plaintiffs herein had the right and authority from said owners to cut the standing timber on said lots within the cause of said owners deeds. And it is further agreed that the title in fee simple to Section 22, and Section 23, all in Township 4, South Range 4 East, in Phillips County, Arkansas, is vested in the Rust Land & Lumber Company, defendants in this cause. It is further agreed by and between the attorneys for both complainants

and defendants that this agreement may be introduced in evidence and used in the trial of said cause as evidence in lieu of the original deeds of conveyance and in place and stead thereof, and shall constitute valid title in the aforesaid owners to the lands as above described.

Signed by attorneys for both plaintiffs and defendants, this the 29th day of November 1913.

MAYNARD & FITZGERALD,
Att'ys for Plaintiff.
WILSON & ARMSTRONG,
MONTGOMERY & MONTGOMERY,
Att'ys for Defendant.

Filed December 1st, 1913.

J. E. MONTROY, *Clerk.*

33 CHARLES MCGHEE, a witness introduced for and on behalf of the plaintiff, having been first duly sworn, testified as follows, to-wit:

Q. Where do you live?

A. Live down on Old River, on Pecan Lake.

Q. Where is the section of land that you live on; what is the number of it?

A. Eleven.

Q. Eleven, twenty-eight, five, Town. 28, Range 5 West in Coahoma County.

A. Yes sir.

Q. How long have you lived there?

A. I have been living there 12 or 13 years.

Q. How long have you owned this particular piece of land?

A. Owned it every since '87 and '88.

Q. You owned it then before you lived on it?

A. Yes sir.

Q. Who lived on it before you as your tenant?

A. Lived on the land there.

Q. Yes.

A. Will Scott, and Nat L. House.

Q. As your tenants?

A. Yes sir.

Q. Is all of the land on the other side of the levy in cultivation now Charlie?

A. On the inside of the levy?

Q. Yes?

A. Yes sir.

Q. I say on the land side of the levy, not the river side, but the land—

A. Yes sir, all in cultivation except a little.

Q. Do you know where these boys cut this timber live here, Isom White, and the co-plaintiffs in this suit, have you been over there and looked to see where they cut this timber?

- 34 A. Yes sir, I have been over there.
Q. Who directed them where to cut over there, Charlie?
A. Who told them where to go and cut it?
Q. Yes?
A. Myself and sister Jackson.
Q. Well now, where they cut over there Charlie, have you ever had a surveyor to survey your lands?
A. Has it been survey over there?
Q. Yes?
A. Yes sir.
Q. Did the surveyor run his lines over there as being your land?
A. Yes sir.
Q. How long ago was that Charlie?
A. That's been, I don't know, sir, exactly how long it has been, but between 12 or 13 years.
Q. Did you know Mr. Houston in his life time?
A. Yes sir.
Q. Was he a surveyor?
A. Yes sir, but he surveyed it before I came in charge of it.
Q. When you bought the land, did you buy his lands?
A. Yes sir.
Q. Where did his lines run to from Section 11, from the fractional part of Section 11, where you were living on, running North?
A. Run across Pecan Lake out near, out to the bank of what is called Dustin Pond.
Q. How far is that from the north bank of Pecan Lake?
A. How far is it to it?
Q. Yes?
A. It is something over a quarter of a mile.

(Montgomery:) We object to that, and move to exclude it, because it is a statement of a proposition of law as to where lines run on the other side of the lake, it isn't competent to prove the lines of a section that way.

(Fitzgerald:) I am simply attempting to prove by this witness where his lines run when he bought the land, and I propose to prove by him he went into actual occupation of the land, has had it ever since then under these lines, and then I propose to show by him what acts of possession he has exercised over this particular land included in the lines by this survey, which is perfectly competent. It is not a question of law as to where a man buys a piece of land as to where he is shown his lines because, provided he is claiming that land, not only under the clause of his deed, but by actual occupation and possession.

(Montgomery:) I submit it is competent to prove that a man has been in actual occupation of a particular piece of land, whether within the real legal lines of land that is described in a deed or not; but you can't prove the lines of the owners run to a certain place, by asking a witness where the lines of that land run, where somebody showed him it run, that isn't competent at all. The lines that he is asking about, that is where the lines run across Pecan Lake; that is merely

a matter of opinion,—an impression of the witness views where the lines should run, not where the lines of the actual Section do run.

(The Court:) I overrule the objection.

Defendant excepts.

Q. What acts of ownership have you and Ellen Jackson and King and Anderson, and Joe Williams exercised over this particular land where the timber was cut, during the past ten or twelve years between Pecan Lake and Dustin Pond, where you saw this timber was cut, what acts of ownership have you done; what have you done to them?

A. What have I done with that land?

Q. Yes?

A. The timber?

Q. Yes?

A. Been cutting it and using it from over there.

Q. What have you done with reference to selling any?

A. May have sold some of it from over there.

Q. Who did you sell it to?

36 A. Sold to Mr. Leavenworth.

Q. How long ago?

A. Well, I couldn't state exactly what number of years it is.

Q. Well, about how long?

A. Been some seven or eight years may be longer than that.

Q. Did you sell anybody else any timber?

A. Well, I sold to him, I didn't sell it my own self, sold it to men getting out the timber, and they sold it.

Q. This time?

A. Yes sir.

Q. The first time?

A. They sold it to the men getting out the timber, and they sold it to Mr. Leavenworth.

Q. How long ago was that?

A. Ten or twelve years.

Q. What, during that ten or twelve years since then, what have you done over there, towards showing it was your land, what have you done?

A. We have been cutting timber off of it all along until here late-

Q. Ever sell Mr. Hull any timber?

A. Yes sir.

Q. How much did you sell him?

A. Well, I don't know exactly, didn't take exact account of it.

Q. How long ago was that?

A. It's been about ten or twelve years ago.

Q. Now, what have you done with reference to having surveyor's lines run through there?

A. Since that time?

Q. Yes, since that time?

A. Well, they have been running some.

Q. Since you owned it?

A. They have been running there some two or three times, Mr. Hull run it out once.

Q. Mr. Hull run it out once?

A. Yes sir.

37 Q. Did he show you where the lines run?

A. Yes sir.

Q. Did it cover these lands that you are claiming?

A. Yes sir.

Q. What was the north boundary of your lands, that you were claiming in there, according to the Hull survey?

A. What?

Q. What was the northern boundary of your land according to Mr. Hull's survey.

A. What was the northern boundary of it?

Q. Yes?

A. How far it run?

Q. Yes, how far did it run?

A. It run to, from the corner of Section- 10 and 14, it run one mile going north.

Q. Well, where did that put you?

A. Put me over on, near the bank, near of the bank of Dustin Pond.

Cross-examination :

Q. The survey that you made made, was made upon the idea of running out the entire lines of the Section that you were on, if it was a full section wasn't it?

A. Full section.

Q. So as to take in a full 640 acre section, was that the idea of your survey?

A. 640.

Q. Yes?

A. No sir.

Q. To size up full section would be what you had your survey made for?

A. We had a half of section.

Q. Well, the full half section?

A. How much is it?

Q. 320 acres.

A. Yes sir.

38 Q. Your idea of a survey, was to ascertain how much of that sand bar over on the other side of this lake you would get, if the lines run out to a full half section, is that it?

A. Yes sir.

Q. What half of a section was yours?

A. What was it?

Q. What was your half of the section, South half, East half, North half, or West half?

A. It was the south and west half running north.

Q. Your deed described the land you bought as lots 1, 2, 3, 4, 8

and 9, Section 11, Township 28 N. Range 5 West, didn't it, that is the way your deed described the land wasn't it?

A. Yes sir.

Q. Or do you know?

A. Sir.

Q. That's the way your land was described in your deed, wasn't it, lots 1, 2, 3, 4, 8 and 9, Section 11, Town. 28, Range 5 W. That right?

A. Well, the way the deed runs.

Q. I say, isn't that the way it read, or do you know, lots 1 to 9 inclusive, Section 11, Town. 28, Range 5 West, that't the land you owned isn't it?

A. Range 25?

Q. 25, yes, Section 11, Town. 28, Range 5 West?

A. Yes sir.

Q. What?

A. Yes sir.

Q. That's the land you owned isn't it, well, do you still own that land?

A. Yes sir.

Q. Your deed didn't convey you any accretions to the land at all then does it?

(Fitzgerald:) We object to that, because it is purely a legal proposition.

Q. I mean, in terms, the words of your deed didn't, — answer until the Court rules on the objection; the words of your deed
39 don't convey you any accretions do they?

A. I don't know sir whether it is on the deed or not.

Q. Do you know how long this land had been there north of this lake?

(Fitzgerald:) I object to the question asked just before this last question; I didn't get time to get my objection in. I object for this reason, we have entered into an agreement which says these parties own this land; then the clause of the deed, it is purely a proposition of law as to whether or not a man owning land, whether he owns the accretions there, would be asking him a question of law.

(The Court:) In view of this witness's answer, I think it is immaterial. He says he didn't know whether it did or not.

Q. How long have you lived down there Charlie?

A. At my home place?

Q. Yes?

A. About ten or twelve years.

Q. Where did you live before that time?

A. I lived up on Mr. Stovall's place up near the brick house.

Q. You are not old enough to have been living there when the cut off was made in the river in '48 are you?

A. No sir, I wasn't here in '48, I was here in 1857 when the water come in July.

Q. You don't know how that land formed over there north of that lake do you?

A. I know a portion of it when the cut off was made, where that cut off was made in 1857, you could go across there, there was a little lake across there, just kind of a wash, and the water come in '57, and washed, cleaned out a lake there.

Q. You don't know how that land formed over there or whether it formed over there when you went there?

A. Yes sir.

Q. This same land that you are claiming?

A. Yes sir.

Q. The main body of water in '57 that you speak of was right along the Mississippi shore, right in there where that lake is now, wasn't it?

A. Where the lake is now?

Q. Yes, that was the main body of water over there, wasn't it, in high water times, this lake was there wasn't it?

A. What.

Q. This lake was there at that time?

A. It was a little small stream, a little small, a little kind of a flat there.

Q. But the main body of water was there, wasn't it?

A. After the high water come in.

Q. Real swift current was there?

A. No sir.

Q. In the high water, where was the current?

A. It was further over.

Q. There is no water between the island, or between the river and the levy on this side, except that big lake and this little pond out there, this pond that you call Dustin Pond was there?

A. Dustin Pond?

Q. Yes?

A. Dustin Pond at that time was a good large stream, it's filled up a good deal since that time.

Q. Does it run into this lake, or not, at low water?

A. Run in this Dustin Pond, run into the lake?

Q. Yes?

A. This lake run around.

Q. It hasn't any outlet at all, has it, this pond?

A. Had which?

Q. Just a little body of water over there without any outlet?

A. Yes sir, there ain't no outlet there, lake come in there and formed in there during the high water.

Q. Where was the timber in '57, do you know, did you know that down there well then?

A. In '57. Yes. All of it that time, except a little piece on this side was opened up, there was a little cleared, open up there.

41 Q. All of this timber on this land in question now hadn't grown there in '57 had it Charlie?

A. Wasn't there.

Q. Wasn't there in '57 was it?

A. Not as thick as it is now, of course, there was some few.

Q. Just a little small cottonwood bushes then wasn't it?

A. Some of it was.

Q. Nothing but a sandbar with some cottonwood bushes growing up at that time wasn't it?

A. Yes sir, some small ones.

Q. And that part of the land never has been attached to the Mississippi shore at all has it?

A. Attached to the Mississippi shore?

Q. Yes?

A. I don't know whether it was attached or not.

(Fitzgerald:) I object to that.

Q. I will frame the question a little bit different, this land north of that never has been attached to it south of the lake, the water between the whole time since then ain't it?

A. Water twix them.

Q. Yes?

A. No sir.

Q. When was it, that there wasn't water between that land and the land south of the lake?

A. Where it wasn't, made it through there.

Q. There is a high bank on the lake, on the south side, isn't there Charlie, south bank is a high bank at low water?

A. On the south side of the lake?

Q. Of that lake, yes? Is there a high bank on the south side of that lake, Charlie?

A. There is supposed to be a bank on it.

Q. Well, I say, it is a pretty high bank isn't it? At lower water mark?

A. I don't say it is quite so high.

Q. How high?

42 A. I couldn't measure.

Q. Ten feet, twenty or how.

A. No sir, I don't know as it is ten foot bank.

Q. The lake is 300 yards wide, isn't it, or over?

A. I don't know sir.

Q. Do you know anything about the depth of the lake, lake depth how deep it is?

A. No sir, I never measured it.

Q. Never measured any part of it?

A. No sir.

Q. You don't know it is from eight to twenty feet deep, do you? In the middle of it.

A. No, I couldn't tell.

Q. How long is the lake from one end of it to the other?

A. Might be a mile, three-quarters of a mile, I guess.

Q. Three-quarters of a mile, or a mile?

A. Or a mile.

Q. Might be more than a mile, you haven't measured the distance?

A. No sir, I have never measured the distance, I couldn't tell.

Q. And isn't it deeper on the Mississippi side than it is on the other, isn't it deeper on the side next to the levy than it is further away from the levy?

A. Deeper on this side of the levy.

Q. No, I mean on the south side, it is deeper than it is on the north side of the lake, isn't it?

A. I guess it is a little deeper.

Q. The deepest part of it then is on the south side of the lake, that is true, isn't it Charles.

A. I couldn't tell, I never have went after nothing to measure it to see.

Q. Now, you say you have got some firewood over there since you have been down there on the other part?

A. I didn't measure it when I was doing that.

Q. I say, you have got some firewood?

A. Yes sir.

43 Q. How did you go over there to get firewood?

A. Go across in a boat.

Q. Have you crossed in a boat, or go around nearly a mile to the head of the lake?

A. Crossed in a boat and floated it over.

Q. That the only way you could get your wood there?

A. Yes sir, the only way around.

Q. Have you ever seen that body of water dry since '57?

A. No sir, I haven't seen it dry, not all of the way, I have seen it dry part of the way, not seen all of it dry.

Q. It wasn't dry on Section 11 at all was it, Charlie?

A. No sir, it wasn't dry on Section 11.

Q. And you say that you have, at some time, sold somebody some timber over there, who was it you sold this timber to first, ten or twelve years ago?

A. First.

Q. Yes?

A. Mr. Leavenworth, I think.

Q. You had a written contract with him?

A. Well, I didn't sell it myself, I sold it to the men was cutting it, I sold it to them, and they sold it to Mr. Leavenworth.

Q. Did you have a written contract with the men you sold to, was it in writing?

A. No sir, just paid me so much.

Q. Didn't have any writing about it?

A. No sir, I didn't write any contract at all.

Q. Just gave them the privilege to go there and cut off so much?

A. Yes sir.

Q. How long did they cut there?

A. I don't know sir.

Q. That is how long ago, ten or twelve years ago?

A. Oh yes sir.

Q. You remember what year it was?

44 A. Along in '90, somewhere along there.

Q. Along in the nineties?

A. Yes sir, along in '92 or '93, along there somewhere.

Q. 1902 or 1903, which do you mean?

A. 1990.

Q. 1902 and 1903?

A. Somewhere, exactly, I don't know.

Q. How long were they cutting in there?

A. I never taken no note of it.

Q. Was it a month or a year?

A. I don't know what month it was, along after Christmas, I don't know whether it was in February or January, I know it was after Christmas, I never took no account of it.

Q. Who else did you sell any timber over there to?

A. Mr. Wyman, I think they sold to him, I never sold none to no company at all, I sold it to these men as cutting timber.

Q. When else did you sell any after that, in 1902, or 1903?

A. What else?

Q. When did you make any other sale?

A. I never took no account of the years at all.

Q. You don't remember any other time on which you sold to these men?

A. Just sold to those men, and them men, they sold it to the company, to these mill companies.

Q. But, you haven't made any sale to anyone since 1902, except to these men, this timber that is in the suit?

A. Yes sir.

Redirect examination:

Q. I understand you to say that you knew Pecan Lake in '57?

A. Yes sir.

Q. What sort of a lake was that then?

A. It was only a small lake.

Q. Where did the levy run in '57, levy they had then with reference to Pecan Lake, where did the levy run with reference to the west end of Pecan Lake?

45 A. Where did it run?

Q. Yes?

A. Just a little small levy over there, no levy to amount to anything.

Q. Did that levy break in '57?

A. I think it did, yes sir.

Q. Now, what did the water do, when that levy broke in there in '57?

A. Just made a wash through there.

Q. Through wherem Pecan Lake?

A. Yes sir.

Q. Did you ever walk around Pecan Lake?

A. Walk around it?

Q. Yes?

A. Yes sir I have been around it.

Q. Where does it go to, does it go anywhere at all, up at the end of it?

A. North?

Q. Yes?

A. Yes, runs around up.

Q. No, I mean at the, say you all started down on the south bank of it and coming around, does it go into anything at all?

A. No sir, runs around down, and runs into Dustin Pond.

Q. Runs into Dustin Pond?

A. Yes sir, what is called Old River.

Q. When you first moved to Pecan Lake, Charlie, how much of a stream was in there?

A. Jut a little small stream in there.

Q. Much as it is now?

A. No sir.

Q. As deep?

A. No sir.

Q. The river had already cut off then had it?

A. Yes sir.

Q. I mean the river then was running where it is now, wasn't it?

46 A. Yes sir.

Q. And what caused Pecan Lake to wash out?

A. This here water come through in '57, in July.

Q. Well, now, where did it go to when it went through there?

A. Well, it went on down, run down through, and then come around into Old River again.

Q. Now, at the end of Pecan Lake, at the north end of Pecan Lake where it runs, does it run into the old river bed, as shown there?

A. Run into Old River?

Q. Yes?

A. Yes sir, runs across into Old River bed, and runs into Old River.

Q. Now, what was Dustin Pond in '57, when you knew it?

A. What was it?

Q. Yes, how big a stream was it?

A. It was right smart stream.

Q. Big as Pecan Lake is now?

A. Yes sir.

Q. Where was the channel of the river then, when the water was up?

A. Channel of the river?

Q. Yes, when the water was up, where did the channel run through?

A. When the water was up, it run through where it is now, where the old river is at now.

Q. I understand, but when the water was up, where did the thin part of the water go, through what place?

A. Through this here, Dustin Pond.

L. W. MASHBURN, a witness introduced for and on behalf of the plaintiff, having been first duly sworn, testified as follows, to-wit:

Q. This is Mr. L. W. Mashburn is it?

A. Yes sir.

Q. Where do you live Mr. Mashburn?

A. Tunica, Mississippi.

47 Q. What is your profession?

A. I am civil engineer.

Q. How long have you been practicing that profession?

A. Eleven years.

Q. What, if any, experience, have you had in surveying, Mr. Mashburn?

A. I have had about what the average surveyor had, I suppose, covering a period of that long of practicing.

(Montgomery:) I think he is a competent surveyor.

Q. You have charge of Mr. Montgomery's ditch—up there, drainage ditch, haven't you?

A. Yes sir.

Q. I present you a map, here Mr. Mashburn showing the location of Pecan Lake, Dustin Pond and Section 11, in Town. 28, Range 5 West, in Coahoma County, and also a skeleton of Sections 22 and 23, Town. 4, S., 4 E., who made that map?

A. I made it.

Q. From what did you make it?

A. I made it from the survey, by survey by myself and coupled with the old field notes by the Government.

Q. Now from that part of the survey which you made yourself, I will ask you whether or not, what this line is right here, that is double line of red and black, marked 6208 feet?

A. That represents the line I run from a known corner at the northeast corner of Section 34, and Town. 3 south of base line, Range 4 East of 5th principal meridian.

Q. In what state?

A. In Arkansas.

Q. Now, I will ask you to show here, or indicate here what shows the line of river as it runs now?

A. The colored, the part colored in green here?

Q. Marked Mississippi River?

A. Marked Mississippi River?

48 Q. Now, I will ask you to say, Mr. Mashburn whether or not you run personally this line from over in the State of Arkansas across the river as it now runs, and brought it, made the triangulation of the river there and brought it down to where the old field notes show that the original bank of the Mississippi river was in Arkansas in '48?

A. I did, 1815 and 1813.

Q. That is the date of the original survey by the U. S. Government of the State of Arkansas?

A. Yes sir.

Q. I will ask you if you surveyed in here, this blue place you got marked Dustin Pond?

A. I did.

Q. Now, where did this Dustin Pond, at its north end on the left hand side, near the figure "2" begin, Section 2, where does it run, Dustin Pond, where does it run to what does it run into?

A. Why it connects with what they call Pecan Lake.

Q. Now, Pecan Lake here, did you make a survey of that too?

A. I did.

Q. Where does that run to?

A. It simply runs out here, like all of these cutoffs, and runs out into nothing, the high ground at the mouth of the cut-off, and at the time of the cut-off spilling over there, fills up first at this point, and leaves the low ground back in the pond.

Q. This is a correct map of that portion of Section 11, of Dustin Pond and the south line of Section 11?

A. Yes sir.

Q. Well from that, that is, how far is it Mr. Mashburn between Dustin Pond and Pecan Lake at the center section of Section 11?

A. Along the north and south center line.

Q. Yes?

A. It is frequently a half mile, got it on my notes somewhere, I would have to scale it.

49 Q. No, is Dustin Pond visible there now?

A. Yes sir.

Q. Is it a body of water?

A. Yes sir; that is: It was when I was there, I suppose it is today.

Q. On the bank of Dustin Pond, right on the south, what is the classes of timber right along to the south of Dustin Pond?

A. Why it is cottonwood timber, I should say avrage from 18 to 24 inches.

Q. Now, what is the class and size of timber as you go back towards the Pecan Lake, in here?

A. Well through there, through this porttion that I got my pencil on in here, there is very little difference in it as you go west, that is: As you go east and northeast, the timber gets large.

Q. Now, how about it on the other side of the bank, on the north?

A. It is still large up there.

Q. It is still larger than that on the south bank, is there a division, what is the banks on the north of Dustin Pond there were they very high, or very low?

A. They are average banks, higher than they are on the south bank.

Q. How wide, that is Dustin Pond is there now?

A. When I was there, it was three hundred and some odd feet wide.

Q. How did the banks range on either side, about how far was visible banks where it shows?

A. I suppose, my best judgment, it would be six or seven hundred feet across it from bank to bank.

Q. Now, how wide is Pecan Lake there in Section 11?

A. On that line, it is eleven hundred feet, that line, of course, isn't straight across.

Q. What line is that?

A. That is the center line of Section 11, North and South center line of Section 11.

50 Q. How wide is Pecan Lake?

A. I judge Pecan Lake is 900 feet wide.

Q. I notice out of Dustin Pond, there is a prong running, did you run that out?

A. I did not, only a part of the way, I know that it, when I was there, it connected with this other prong, however, I know that simply by walking around it.

Q. Now this prong in here, from your observation in there, were high banks in there also?

A. There was high banks, but it was narrow.

Q. But, you could see it was banks there?

A. Oh yes sir, there was banks there.

Q. There was low banks also on this point?

A. No sir, not on this point low bank up there.

Q. High bank on this side?

A. No sir not high banks.

Q. They are low banks in here?

A. Low compared with this bank and this bank. The north bank of Pecan Lake is lower than the south bank of Dustin Pond.

Q. Does your map here now show the true original traverse of the Mississippi River as it ran when the survey was made in 1815 and 1816?

A. It shows, it corroborates the field notes.

Q. Of the Government survey?

A. Yes sir.

Q. Between this point here and Dustin Pond, between the point of Section 22, as shown on your map, being the old shore of Arkansas, is there any depression between there and Pecan Lake?

A. Nothing only the Dustin Pond depression.

Q. Does it run all below Section 22, or as far as you surveyed through there?

A. As far as I surveyed through there, it does.

Q. Now, how many sections of land, Mr. Mashburn is there between this point as shown on your map of Section 22 and Pecan Lake?

A. You mean the distance, how far is it.

51 Q. Yes, how far is it?

A. Why there is about seven thousand feet, I would judge, that is about a mile and a half.

Q. Now, how far is it, does this map here show, the original traverse line of the river, as surveyed in the State of Mississippi in '33?

A. It does.

Q. How far was it from the point in 23, on the right of 23, south-east corner was it, if you let that point remain there where it was in 1815, how far is it between that point and the original woods in 1833, in Mississippi, running east?

A. The original field notes show Mud Lake to be 4 chains from the section corner, from the section, northeast corner of Section 6, Township 28, Range 4 West, Coahoma County.

Q. I will ask you to mark that, that is there?

A. Now, on that same plate, on the Township Plat, they will show without any measurements to it, the Mississippi River banks approximately, drawn to his scale that he has got his plat drawn to, a quarter of a mile further west. If we take that point as correct, and put it a quarter of a mile west of the corner, the west corner of Section 6, Town. 28, Range 4 West, there will be in the neighborhood of a quarter of a mile between the old point of Arkansas, as shown by the 1815 and '16 survey, and the 1833 survey on the Mississippi side.

Q. If that was the case then in '33 when the Mississippi River was located here by the Government's surveyors, if the original point had still remained in Arkansas, as it was in 1815, how wide would the river be at that point?

A. About fourteen hundred feet wide.

Q. Now much wider than Pecan Lake?

A. Very little wider.

Q. Was that or not sufficient to carry off the water?

A. In my opinion, it was not.

Q. I notice here an island, and an island on your map in pencil just below Section 22 and 23, is that shown by the original
52 Government Plat.

A. That is shown on the original Government Plat of fractional Township 4, South of the base line, Range 4, E. of the 5th principal meridian in Arkansas. That island is shown, sketched in on his plat, without any measurements to it at all.

Q. Was that included in the '15 and '16 survey by the surveyors of Arkansas, as a part of the State of Arkansas, or was it surveyed at all?

A. It wasn't surveyed.

Q. When you arrived at the south pond of your line, drawn across the Mississippi River and to the old original traverse of the Mississippi River of Arkansas in 1815 and '16, on a line between Section 22 and 23, was there any depression between that point and this island that we have marked?

A. Surveyed to this point, there was no depression here.

(Maynard:) What point is that, locate it Mr. Fitzgerald, I will just ask the Court to tell him, if he didn't survey, he need not answer as to that point, just show he didn't survey at that point.

A. I didn't survey at that point.

Q. Mr. Mashburn, you say that you didn't survey the land lying between the original traverse, State of Arkansas as shown on your

map, markey 1815 and 1816, and the island which was shown on that old map, but, did you walk over it or walk through it?

A. Why, I walked through the whole territory there.

Q. Was there a distinct depression between this Section 22 and 23 in this old island?

A. In just walking over it, couldn't exactly tell when you got to that very line, but there is a distinct depression in there.

Q. Showing that there had been a water course through there?

A. Well, I don't know that it was right at that point, but I know in that vicinity somewhere, there is a distinct depression running east and west, in that general direction.

L. W. Mashburn map here introduced.

53 Cross-examination:

Q. This depression you spoke of, you don't say it is between this thing they call an island and the Arkansas bank?

A. I say it is in that general vicinity, yes.

Q. You can't locate it accurately?

A. No sir, I never surveyed it.

Q. You have had a great deal of experience in surveying lands and running levels over them to ascertain the elevations, haven't you?

A. Oh, yes sir.

Q. You run any levels over any of that land, to see the different elevations?

A. No sir.

Q. Can you state the difference in elevation, the height of the land between Dustin Pond and Pecan Lake, and the lands further north than Dustin Pond?

A. Why no absolutely, no, I couldn't do it absolutely, I simply know that the land is, north of Dustin Pond or higher than those between Dustin Pond and Pecan Lake.

Q. They are higher?

A. Yes sir.

Q. The timber growth is there older isn't it?

A. It looks to be older, I am not an expert.

Q. And as you approach Pecan Lake, it become smaller, doesn't it?

A. When you get right down against Pecan Lake, there seems to be two banks; I beg your pardon, you are speaking of Pecan Lake, I was thinking about Dustin Pond.

Q. There as you approach Pecan Lake north, the timber is small?

A. I mean coming from Arkansas Island.

Q. Well, now, do you mean between Dustin Pond and Pecan Lake, or north of Dustin Pond?

A. Between Dustin Pond, between Pecan Lake, and the original Arkansas shore.

Q. Well, the land, the timber that lies between Pecan Lake and Dustin Pond?

A. In my opinion is very near of a uniformity after you leave

54 Dustin Pond for the first two hundred feet, which seems to be a second bottom, or lower ground than that after you get back a little further, it is still small timber, but after you get from two to three hundred feet from the north back of Dustin Pond, is along the line that I surveyed there, the timber gets to be,—well it looks to me older than that is on the island.

Q. That is going north towards the island?

A. That is going north towards the Mississippi River as it now runs.

Q. Well now, between Dustin Pond and Pecan Lake, the timber grown smaller as you go towards the southwest, that is — isn't it, or northwest?

A. That is northwest.

Q. As you go towards the northwest between the two bodies of water where it grows narrower, gradually grows smaller, up in there doesn't it?

A. I couldn't notice any material difference in it, it may be though.

Q. Up there where they come nearer together, the timber is quite small?

A. There is nothing there, of course, but bushes, right at the end of it, but after you go back, get back say three or four hundred feet from the connection, the timber seems to be practically the same size it is down here.

Q. It is large timber?

A. I estimated it to be about twenty-four inch timber, I may be wrong in it.

Q. There is some trees between Pecan Lake and Dustin Pond, on, what is that Section 11?

A. Eleven.

Q. Center line of Section 11 is large as 40?

A. I never saw one that I thought was forty inches.

Q. You wouldn't undertake to say there wasn't?

A. No sir, I couldn't, I didn't see any that I thought was forty inch timber though.

Q. Now, going on, what would you call that, northwest?

A. Northeast.

55 Q. Going on towards the northeast to the point where there is no, Dustin Pond, the timber is still larger isn't it, up in there?

A. After you cross this bayou, or depression here, I don't know whether it is a bayou, or a depression, the timber begins to get larger.

Q. Gets larger?

A. Yes sir.

Q. And this thing you call a bayou, a division when you made your survey there wasn't water in it?

A. Yes, sir, there was water in it then.

Q. How wide was it?

A. It was narrow, I suppose fifty or a hundred feet wide.

Q. How far did it extend from its point of intersection with Dustin Pond?

A. Run all around here, and joined it, joined back here to a pond that leads out of Pecan Lake.

Q. Was there water in it all the way around?

A. Yes sir, there was at that time.

Q. Just kind of a washed out, deep slough?

A. It looked like what we ordinarily call a slough, or pocket.

Q. It suggests the formation of a wash out or water course, as you *generally* find on this sandy land??

A. You find them more or less, it is a bayou, you can draw a distinction between one you find on the outside and one your find on the inside, it is simply a bayou.

Q. Those kind of washes are made by the river on newly made land are they not?

A. That is a theory of it, yes, sir.

Q. The south bank of Pecan Lake, has it a well defined bank there?

A. Yes sir, very well defined.

Q. How high is it?

A. Why, I would judge it is between, when I made my *durvey*, between six and ten feet.

Q. How high is the north bank?

A. Low bank is very low, north bank is very low, that is the north bank of Pecan Lake is very low.

53 Q. Between one and three feet?

A. I suppose the highest point in this vicinity here may be five feet above the water of Pecan Lake.

Q. And some places, it is right on a level?

A. As I said, I didn't run the levels over it.

Q. Almost on a level with the sandy part of the land in some place?

A. How is that?

Q. Hardly any bank at all in some places on the north side of Pecan Lake?

A. No, they had very little bank there.

Q. And, as you go from this point, from the point where the east line of Section 11 reaches the north bank of Pecan Lake, the timber gradually grows larger as it goes on towards the Mississippi River, doesn't it?

A. Why, I only know that that country by walking over it, except this line, *ny* walking through that is the only way I know it I consider, as you go this way.

Q. Towards the Mississippi River?

A. As you go northeast, the timber gets larger, after you cross this bayou there.

Q. After you cross the bayou?

A. Yes sir.

Q. Continues to grow larger as you go on?

A. Well, I don't know that it *grown* larger, but it is considerably older looking timber to me than this that is on Section 11.

Q. Older looking?

A. Yes.

Q. Now, you have been a surveyor for how long, Mr. Mashburn?

A. Eleven years.

Q. You have had a good deal of experience in surveying timber lands in this country during that time?

A. Well, I don't know, I haven't had the experience, I suppose, that some people have, I have had quite a bit.

57 Q. During all of that time, you have had a good deal of experience in surveying these lands where cottonwood timber is found?

A. Well, not very much, but then I have had some.

Q. The cottonwood timber is only found in any quantities in this country on the newly made lands on the outside of the levy?

A. It grows better there than anywhere else.

Q. Did you make any observations with reference to the Arkansas shore, as defined by the Government survey of 1833 Mr. Mashburn?

A. No sir, I did not.

Q. There was such a survey made by the Government, was there not?

A. Not that I know of, no sir, not the Arkansas survey, the Mississippi survey was made in 1833.

Q. Do you not know that there was also a survey of the Arkansas bank at that time?

A. No sir.

Q. Did you survey the lines of the Mississippi shore, or examine the lines of the Mississippi shore as indicated by a survey of 1833?

A. Part of it, yes sir.

Q. Does your map show that?

A. Yes sir.

Q. Show the jury there on the map, the Mississippi shore as indicated by the Government survey of 1833?

A. Dotted line there represents it.

Q. That line runs down——

A. Through the——

Q. The meanderings of Pecan Lake, principally, on the north side of the lake?

A. It runs very near on the north side of Pecan Lake.

Q. And follows in the main the meanderings of the lake?

A. Yes sir.

Q. The bounds of the lake?

A. Yes sir.

Q. How long is Pecan Lake?

58 A. It is owing altogether when you measure it.

Q. Did you ever measure it?

A. No, sir.

Q. You went from one end of it to the other?

A. I have been, several times, yes, sir.

Q. What is your best judgment about the length of it?

A. As I say again, that depends on when you measure it.

Q. I mean now.

A. At the present time.

Q. Or, when you were there?

A. When, I was there, well at the time I was there last, I didn't go all of the way to the west end, or the northwest end of it, but I judge from the times that I had been there previous that it must be three or four miles long, possibly five, it all depends, the length of it depends on the stage of the water, of the Mississippi River, or whether it is in a dry season, or in a wet season.

Q. The blue tinted places on your map indicate Pecan Lake and also Dustin Pond?

A. Part of it, yes, sir.

Q. Such part of it as is attempted to be shown on your map?

A. Yes, sir.

Q. That doesn't attempt to show all of Pecan Lake?

A. No, sir, nor all of Dustin Pond.

Q. Is the comparative size, or width of the two lakes about correctly represented by the size in the tinted space?

A. Yes, sir, the map is correct as I surveyed it.

Q. That represents the comparative width of the two lakes?

A. Yes, sir.

Q. Have you ever had any way of knowing the depth of Pecan Lake?

A. Never measured it, no, sir.

Q. Never measured any part of it?

A. No, sir, never measured it at all, all I can say would be hear-say.

Q. You don't know whether it is deeper on the south side,
59 or the north side?

A. No, sir, I couldn't tell you.

Q. From your observation of the banks though, you would say it was deeper on the south side, than the north side, would you not?

A. Well, I don't know, it looks from the formation of the banks though it was.

Q. And steeper banks though isn't it on the south side than the north side?

A. Yes, sir, except I don't know that to be a fact.

Q. That is an indication that the water would be deeper on a high bank than it would be on a low bank?

(Fitzgerald:) We object to that.

(The Court:) I sustain the objection.

Defendant excepts.

Redirect examination:

Q. You say this was the line in 1833?

A. Yes, sir.

Q. And this is the line in 1816?

A. Yes, sir.

Q. Showing, as between those surveys that the river ran between these two lines, one under Section 22 and 23, and the one marked 1833?

A. Yes, sir.

Q. Now, how far is it between the point where the line between Sections 22 and 23, down to the old traverse of '33 of Mississippi?

A. It is very near two miles, mile and three-quarters at least.

Q. Is there any way of telling where that river in there ran in '48, when this river cut off up here?

A. If there is, I don't know how to do it.

Q. There is no indication is there, Mr. Mashburn that the line in 1833 ran exactly like that in '48?

A. No, sir, none whatever.

Plaintiff rests.

60 F. S. DESHAU, a witness introduced for and on behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Q. Where do you live Mr. De Shau?

A. I live at Alpina, Mich., my home is.

Q. Are you connected in any way with the Rust Land & Lumber Company?

A. Yes, sir, I have been for years.

Q. How long have you been with them?

A. Well, I have been with them for over twenty years.

Q. What is your office with that company?

A. Well, I look out for their lands in general, Timber estimation.

Q. Are you, or not, a land surveyor?

A. Oh, well, I do some of it, I don't answer for a civil engineer at all.

Q. You do some land surveying?

A. I do a great deal of that, yes, sir.

Q. Were you with the Rust Land & Lumber Company, on the 8th day of June, 1914, when they bought this land?

A. I was.

Q. The land in question in this suit?

A. I was.

Q. Do you know anything about the instrument that I hand you, Mr. De Shau?

A. Well, this, I know something of, but I am not well posted on this, that is handled by other parties.

(Montgomery:) I want to read the deed and offer it in evidence.

(Fitzgerald:) I object for a number of reasons;

1. Because the counsel for the defendant and counsel for the plaintiff have already introduced an agreement, have entered into an agreement, which has been introduced, and that that agreement might be effective and should be used in evidence in lieu of the original deeds;

2. Because this instrument here isn't proved, the signatures thereof are not proven as being the deed, unless it is the original deed, I haven't looked at it; and

61 3. Because the lands herein conveyed are conveyed to W. A. Rust,

who it is not shown is the Rust Land & Lumber Company by any means, and unless proof is made that W. A. Rust has already conveyed the lands to the Rust Land & Lumber Company at some time, the deed so far wouldn't be competent;

4. Further, no matter what the deed might recite as to conveying accretions, it could not convey more than the law allows.

(Montgomery:) That is all-right, we will withdraw the deed. The agreement, we think, covers it.

Q. What time did you begin to handle this land matter of theirs down there at Horseshoe Point?

A. Well, its been about ten years.

Q. You make any surveys to ascertain the lines?

A. Well, I made a great many surveys, yes, in there at different times, I made a survey there twice.

Q. Well, did you find any possession in anybody of the land, on which the timber in controversy in this case was cut?

A. Well, I found it on the island, off of Phillips County, 4 South 4 East.

(Fitzgerald:) We object to where he found it on, said he found it in Phillips County, Arkansas.

Q. I am asking him if he found it in possession of anybody?

A. I didn't find anybody in possession no more than the Rust children which claimed the land.

Q. What evidence, if any, did you find of any claim of possession by anybody of the land on which the timber in controversy in this suit was cut?

A. None whatever, no one.

Q. Were you in charge of the business, or not, of the Rust Land & Lumber Company in connection with their lands and timber down there about that time?

A. I was.

Q. And have been since then, or not?

A. I have, yes, sir.

62 (The Court:) The objection was made a minute ago, that the land was in Phillips County, Ark., the objection is sustained.

Defendant excepts.

Q. What evidence have you observed at any time of anybody being, or claiming to be in possession of the land where this timber was cut, if any?

A. I never had any.

Q. What was the first notice you had that anybody else claimed that timber?

A. First notice was, that was on Saturday, January 18th.

Q. Of what year?

A. 1913.

Q. How did you obtain that notice?

A. Well, I come into Memphis, which I had a man here that

looks after these lands all of the time, and he had advised the office in Memphis, and I come in there on Saturday.

(Fitzgerald:) We object.

(The Court:) I overrule the objection.

Plaintiff excepts.

Q. Don't tell the conversation, that was or not the first notice that you had received anybody had trespassed, or claimed set-up?

A. Yes, sir, that was the first notice.

Q. What, if anything, did you do?

A. I came down here.

Q. What did you find Mr. De Chau?

A. I found that he had cut some timber over there, which we claimed to be on the island.

Q. What timber was that?

A. Was the cottonwood.

Q. I mean with reference to whether or not it was the timber that is replevied in this suit?

A. That was the timber replevied in this suit.

Q. What did you do with reference to going over there to see them about it, or taking anybody with you over there for anything?

63 A. Well, I went down to Helena and got a deputy sheriff of Phillips County and took him down there.

Q. What kind of affidavits did you sue out, if any?

A. In Phillips County.

Q. What was the nature of the action?

A. Well, they served a paper on these colored fellows not to cut any more timber there, and that I was taking possession of the timber.

Q. From whom did you obtain those papers?

A. From Helena.

Q. From what office?

A. The Sheriff.

Q. Where did he get the writ that he had?

A. Well, I expect that he got it from the attorney's office.

Q. Did you have a lawyer employed over there in Helena to sue out these?

A. Yes sir, Mr. Saterfield, and whatever his partner is, he was the man that got the papers.

Q. What was the paper that this man carried over there, if you know, where is that paper, if you know?

A. I don't know where the paper is now.

Q. What was that paper?

A. I couldn't tell you that.

Q. Was it a writ, or notice, or what was it?

A. It was a notice.

(Fitzgerald:) We object unless he knows what it was.

Q. Do you know what it was?

A. It was to notify these fellows not to molest that timber any longer.

Q. Who wrote the notice?

A. Mr. Saterfield.

Q. Of the firm of Moore & Saterfield, in Helena?

A. Yes sir.

Q. And who signed it?

A. The sheriff, he handed, the sheriff, he signed it himself.

Q. He signed it himself?

64 A. Mr. Saterfield and he had some witnesses come in and sign it.

Q. And handed it to the deputy sheriff, or to the sheriff himself?

A. Yes sir, handed it to the deputy sheriff.

Q. What was the name of that officer?

A. John; I have forgotten.

(Fitzgerald:) We object, unless he knows.

Q. Do you remember the name of the officer?

A. That's the fellow, I am trying to think of his name now, his first name was John, I know, but I have forgotten his other name.

Q. He went over there with you?

A. Which to Helena?

Q. No, from Helena, over there to see these plaintiffs?

A. Well, sir, the fellow, the deputy sheriff.

Q. What did you say, or he say to any one of them, about arresting them and putting them in jail, if anything?

A. Why, he served the papers on them and told them, they dasen't go over and molest that timber any longer, that I was taking charge of the timber, and they were satisfied.

Q. What did they say?

A. They give up the timber at that time in my possession.

Q. What did they say?

A. The negroes.

Q. Yes?

A. Well, they said that they had bought this timber from different parties, there was six of them, and Isom White and Zanders Parker, told he and I that they had purchased this timber, bought this timber rather from King and Anderson; Will Scott, said that he had bought the timber from Ellen Jackson; Burt Coleman and Nicholas said they had bought the timber from a man named Joe Williams.

Q. What did they say, if anything, about releasing it, or not releasing it?

A. Why they said they would release the timber.

65 Q. What threat did you make against them, if any, if they didn't release it?

A. Well, the deputy sheriff told them that if they ever went across there, or didn't release this timber, they were going to take hold of them and take care of them.

Q. That was over in Mississippi that this conversation occurred was it?

A. Yes sir, that was in Mississippi.

Q. He told them that they might be taken and arrested if they went over there on that land any more?

A. He did, told them he would take them down to Helena.

Q. What did they say with reference to whether they owned the timber then or not?

A. Oh, they didn't say they owned the timber, they said they had bought the timber.

Q. What statement did you make to them about whether you owned the timber?

(Fitzgerald:) We object to that.

(The Court:) I sustain the objection.

Defendant excepts.

Q. What offer, or threat, of violence did you make towards these plaintiffs if they moved that timber?

A. Well, that was all that was said, that if they ever crossed over or taken that timber, or molested that timber in any way, that they were going to be put in jail, taken care of.

Q. And who said that, you or this deputy sheriff?

A. The deputy sheriff.

Q. What did you say yourself?

A. I told them also that that was my intention to do.

Q. What did they say exactly then, either one of them, after you said that?

A. Well, they said they wouldn't do any more to the timber.

Q. What contract, if any, did you then make with them?

66 A. Well, the next day, I hired those fellows; I told them I would give them one dollar per thousand to float this timber out of the woods and take it down to the Mississippi River, at a point where they called Ledbetter, I think, where I could either load it on barges, or raft it, take it down the Mississippi River, they said they would do it.

Q. What did they do, if anything, with reference to carrying out that agreement?

A. Well, they went to work at it, and they floated some of it, and I hired some more negroes, put them on there and *float* floated myself, drug the timber out of brush, and we kinder put it up, I got some blocks etc. and put it up so they would hold together and took them and floated them down the Mississippi River.

Q. How long did they continue to work on that before the writ of replevin was issued in this case?

A. They replevied of me the 8th day of February, the first floating was done, was done on the 22d day of January.

Q. And the conversation between you and the deputy sheriff and these plaintiffs was on what date?

A. It was on the 21st day of January.

Q. And when was the writ received?

A. They replevied of me on Saturday February 8th.

Q. Where was the timber then?

A. Part of the timber, a little over half of the timber was out to

the island on that Old River, and the balance of the timber was across the old river, near the levy, out near the levy.

Q. Is what you call Old River, was it sometimes called Pecan Lake, or not?

A. I never knew it by Pecan Lake, but I know it by Old River.

Q. You notice a body of water on the map there that is testified to by Mr. Mashburn, the larger blue tinted place towards the south of the map?

A. Yes sir, there is one part of it.

Q. Is that or not then designated Old River?

A. That's what I know as Old River, what I have always known it as.

Q. Where do you get the name of Old River?

67 A. I get it from everybody that is around the country that I have talked to.

Q. Did you ever hear it called Pecan Lake?

A. Never do.

Q. What is the name commonly given to this smaller body of water north of what you call Old River?

A. Well they call it Dustin Pond.

Q. Is that body of water at low water any outlet?

A. Well, yes, they have an outlet into the main channel out of Old River.

Q. How long have you known these two bodies of water?

A. Well, the first time that I was in there was in 1896.

Q. How is the timber between the original Arkansas Shore, as shown by the old Government surveys and this body of water that you call Old River?

A. Well you take about this far here and the end of this pond—

Q. The northeast end?

A. The southeast end rather, this is old timber in here, very old growth timber now until you get out here, there is kind of a drop here, it gets into lower land, and this seems to be a good deal younger timber.

Q. How is it between Dustin Pond?

A. That is timber, I should judge about, the best of my knowledge would be timber, possibly along 55 to 60 years old.

Q. Now, how is the bank of this Old River, the true bank, the north bank and south bank, as to their relative height and steepness?

A. The south bank of this Old River is rather high; well, in fact, the levy runs quite close to this Old River today.

Q. Where does this levy run?

A. Right here at this point, it is very close here.

Q. You mean the lines south-bound?

A. Yes sir.

Q. Very close to it?

68 A. Very close to it.

Q. About how far?

A. This bank here, at low water is, well, I should judge between eight and ten feet high.

Q. How high is it on the north bank?

A. On the north bank is lower ground, very much lower.

Q. Is that a steep bank, or a sloping bank?

A. A sloping bank.

Q. The timber on the north bank of Old River, does it grow larger or smaller as it proceeds towards the northeast?

A. Right at the bank of the Old River, it goes up pretty much into large willows.

Q. From there, on to the northeast line, does the timber grow larger or smaller?

A. Well, there ain't much difference in the growth of the timber, except in ridges, now you will find timber that seems to be older on one ridge, and then you drop down a little further, and the timber is a little smaller, according you go to the edge of the river.

Q. Going to the northeast corner, clear to the old original bank of the Arkansas Shore, how is it as to whether it grows larger or smaller as you go towards the Arkansas Shore?

A. Don't seem to be very much difference, I think a little smaller right here than any part of—

Q. Right about,—east of Dustin Pond?

A. Yes sir.

Q. This little depression indicated near the southeast of Dustin Pond there, what is that, a slough, or washout, or what is it?

A. Well I don't know, there is an old slough there that comes in, just a small slough grows up with brush.

Q. Did you ever survey those lines, from the original Gov. survey down to Old River?

A. Well, just in a general way for my own purposes, I have never made no survey.

Q. For what purpose did you make this survey?

69 A. Purpose of estimating timber.

Q. You know anything about who made this plat or map?

A. Well I think Mr. Schlierholz—

(Fitzgerald:) We object.

(The Court:) I overrule the objection.

Plaintiff excepts.

Q. Do you know whether any survey was made by any surveyor, which this map represents?

A. Yes, Mr. Calhoun made a survey.

(Fitzgerald:) We object; before he testifies to that map, I want to question him as to what he knows about it, so that I can tell whether or not he knows what he is testifying about.

Q. Do you know whether or not there is any field on any part of the land of the Rust Land & Lumber Co. claims over there?

A. Yes sir, there is.

Q. Where is the field?

A. The filed is, one right about here.

Q. Show, on the map up there on the wall, where the field is?

A. Now, the field we will show is right in here, and there is a little

field that runs in here, south of it, and the other one lies right here, down here.

Q. Now, what section is the field on, is the field you speak of on?

A. Well, now that is on an island, as far as the second part, I except.

Q. Locate on the different sections, where the fields you spoke of are to be found?

A. Well now, this ought to be found in 14.

Q. How much field is there in 14?

A. Oh, there is over a 160 or 170 acres I guess.

Q. Whose field is it, who is cropping it?

A. It belongs to Rust Land & Lumber Company.

Q. Who is working it?

A. Mrs. Pearl Blair.

Q. Renting it from anybody?

A. Renting it from the Rust Land & Lumber Company.

70 Q. Where is the other field?

A. Right south of it, in this in here.

Q. Who is working it?

A. No one, simply an abandoned field.

Q. Where is the other field?

A. Other one is down here.

Q. You mean east of Dustin Pond?

A. Yes sir.

Q. Dustin Pond is on what section?

A. I call that on Section 23.

Q. Now, who is working that, if anybody?

A. No one.

Q. You know when that field was cleared up there?

A. I don't, no sir.

Q. Do you know who has ever worked it, if anybody?

A. I do not.

Q. This field that you say Mrs. Blair is working, how long has she been working that field?

A. Four—

Q. Does that include this year or not, what years has Mrs. Blair been working that field?

A. Mrs. Blair has been working the field herself two years, and Mr. Blair her husband, worked it for two years before he died.

Q. What two years did she work it?

A. She worked it last year and this year.

Q. What years did her husband work it?

A. The year before that, and the year before that.

Q. And whose tenants, if anybody's, were they working it?

A. They were working, we rented the fields to them.

Q. Now before her husband had worked it who had worked it, if anybody?

A. A colored man by the name of John Sime.

Q. What years did he work it?

A. He worked it on and off, just previous to that, I couldn't tell you.

71 Q. Who worked it in 1909?

A. John Sims.

Q. Who in 1908?

A. John Sims.

Q. Who in 1907?

A. Mr. Blair.

Q. Who in 1906?

A. I guess 1907, this is '13, Blair had it four years and John Sims before that.

Q. Let's go back and get the years as they come, '13 who worked it?

A. Mrs. Blair.

Q. In 1912 who worked it?

A. Mrs. Pearl Blair.

Q. Who worked it in 1911?

A. Mr. Blair.

Q. In 1910?

A. Mr. Blair.

Q. In 1909?

A. John Sims.

Q. In 1908, who worked it?

A. I think John Sims, I don't know.

Q. Were you down there at any time?

A. I just go down there and knew somebody was working it, but I wasn't acquainted with John Sims then.

Q. What tenant was working it in 1908?

A. Dan Fitzhugh.

Q. Was Dan Fitzhugh's tenant working it?

A. He was renting it for the Rust Land——

Q. Who worked it in 1907?

A. I don't know.

Q. Were you down there in 1907?

A. No.

Q. Or in 1906?

A. No, I was off west.

Q. 1905 or 1904?

72 A. No sir.

Q. You wer-n't there those three years?

A. No.

Q. When did you first see that field?

A. I saw, first seen that field in 1896.

Q. 1906, or 1896?

A. 1896, I was down here and went all over that island.

Q. That before or after the Rust Land & Lumber Company?

A. After they had bought it.

Q. From whom did they buy?

A. Well, that I don't know.

Q. Who has paid the taxes every year since 1894, on that land that you know?

A. I can't answer that.

Q. You do not handle the payment of the taxes?

A. I do not.

Q. What timber, if any, has there been cut off any of that land during the time that you know it, other than the timber in controversy?

A. Well, there has been a great deal of timber cut on the river banks over there, the bank keeps caving.

Q. Who cut it?

A. Mr. Bowie.

Q. Who is he?

A. Henry Bowie.

Q. Yes?

A. He is the man that is looking after those lands.

Q. On what sections has he been cutting?

A. He has cut off 27, 26, and along that part of the country he has cut in 20, near Miller's Point just above Friars Point.

Q. Who, if anybody, has cut any timber on Sections 22 and 23 on which these plaintiffs cut this timber?

A. No one that I know of except that we cut, the bonded timber, fellow named Charlie Sherman he cut some one year.

Q. You mean saw timber?

73 A. That may have fallen down by wind, thrown down by wind, and I had that cut out.

Q. Who cut that?

A. Charlie Sherman and colored fellow named Andrew Silas.

Q. For whom did they cut?

A. Cut for us.

Q. You mean the Rust Land & Lumber Company?

A. Rust Land & Lumber Company, yes sir.

Q. When did they cut?

A. They cut some three years ago, and they cut some four years ago and since.

Q. What sections was that timber on?

A. Well, it was cut on an island.

Q. Cut on the accretions?

A. On 30, 20 and 23.

Q. On the accretions, or main shore?

A. Accretions.

Q. What timber, if any, has the Rust Land & Lumber Co. caused to be cut between Dustin Pond and Pecan Lake?

A. Simply cut the timber that was thrown over by wind in that part of the country.

Q. You say that was how long ago?

A. Three and four years ago, five years ago, we cut some out of there and loaded some out of there.

Q. That was between Dustin Pond and Old River?

A. Yes, sir.

Q. You know the timber that has been levied on in this case, you know it, do you?

A. Yes, sir.

Q. You have examined it and scaled it or not?

A. Yes, sir.

Q. Who scaled it?

A. I have,—well a man named Jim Sexton and a man named W. H. Daught.

Q. Were you present or not when it was scaled?

A. I was right there.

Q. Do you know what it scaled?

A. Yes sir.

74 Q. You made the bond for the company that was interposed in the replevin of this timber, did you not?

A. Yes sir, the company had to make bond.

Q. What did you do with that timber after you made bond?

A. I floated it out at this point known as Ledbetter Landing on the Mississippi River.

Q. What disposition did you finally make of it?

A. Well, I sold it to W. D. Reeves, of Helena, and loaded the timber on barges.

Q. Where did you sell it to him, at Helena?

A. I sold it to him right from here over the telephone.

Q. Sold it to him, where, the price was so much at what place?

A. At Helena, and I was here at Friars Point at the hotel.

Q. Were you to deliver it at Helena, or not?

A. No sir, I was to deliver it to the barges over there at Ledbetter, and he was to load it?

Q. Where was the barges, at Ledbetter?

A. At the barge.

Q. Where is Ledbetter?

A. Right straight south from where this timber was cut practically, where it comes out to the Mississippi River, it is about three miles, I should judge, or three and a half miles from where the timber was cut.

Q. Where was the timber when it was loaded on, you say it was all in the Old River, at that time or not?

A. I know the timber was in the brush where it was cut.

Q. You know the value of that timber?

A. Yes, sir.

Q. Per thousand feet?

A. I know what I sold it for.

Q. Were you acquainted with the value of timber?

A. Market value of timber at that time, yes sir.

Q. You were acquainted with the market value of that timber at that time, and at that place?

A. Yes sir.

75 Q. What did the scale of that timber amount to?

A. Well, the scale of that timber amounted to 301,429'.

Q. And what was the cash market value of it at the place where you sold it?

A. Eleven dollars per thousand.

Q. And what did it cost to put it there from the place where it was levied on?

A. Well, it cost from the place where they levied on me, it cost about fifty cents a thousand to put it there.

Q. Did you or not ever measure the depth of the water in Old River?

A. Yes sir, I have.

Q. To what extent did you measure it?

A. Well, I measured right across Old River.

Q. At what point?

A. I measured it on the section line between 12 and 11, I measured it on the quarter line, 12 and 11, I measured it on the section line between 10 and 3.

Q. What was its deepest place?

A. 19 feet.

Q. What was it as to whether it was deeper or shallower on the south part of it, than on the north side?

A. It is deeper on the south side.

Q. About how much comparatively?

A. Well, I think she run from eight to ten feet on the north side and she run from thirteen to fourteen feet on the south side, in the center ran from sixteen to seventeen feet on the open water now.

Q. From the north side going toward the center of the lake, did it gradually increase in depth?

A. Yes, sir.

Q. And from the south side going north?

A. Yes sir.

Fitzgerald: We object to leading.

Q. The greatest depth extended about how far from the south bank?

76 A. From the south bank, well we taken about a hundred feet.

Q. From the north bank?

A. Same distance, or a hundred feet, same distance.

Q. On that north bank, or south bank?

A. From the north bank and south bank both.

Q. What is the distance across it?

A. The distance across it would make an average of about 850 feet.

Q. How wide was the deepest part of it?

A. Well, I don't know as I could say exactly how wide it was, but I should judge it would be maybe over, maybe a couple of hundred feet.

Q. Where does the water on that Old River begin?

A. Well, from the north end, from the east end.

Q. Yes?

A. Well, it begins along below the township line about three-quarters of a mile.

A. About how far from where this timber, from the point on Old River opposite where this timber was cut at the northeast end, begin the east end?

A. Well, it would be about two miles.

Q. And how far south does it go from there, or west?

A. Or west, it runs up within, Oh, less than 80 rods, that would be a quarter of a mile from the township line.

Q. Well, then, it is how far from the point of Old River, opposite where the timber was cut?

A. Well, it would be about two miles from the west side, and the other side would be about a mile.

Q. And the length, of the Old River is about how much?

A. Length of Old River, let's see, it would be, one, two, be three miles.

Q. Is it of an uniform width, or does the width vary materially on the whole length of it?

A. Oh, I don't think it varies very much, of course, it is in a Crescent Shape you know.

Q. And the average width is what?

A. I think would be along about 850 feet.

77 Q. Did you ever measure clear across it to see what the width was?

A. Yes sir?

Q. What was the result of that measurement?

A. You will find it in different parts, while I can't recall that now I think we got a note of that.

Q. You remember what your measurement showed?

A. Well, some thirteen, over thirteen chains in some part of it.

Q. And a chain is how much?

A. Chain is four rods, be 66 feet, as near as we can get chains, be 66 feet and a half.

Q. Did you ever make any measurements or not of Dustin Pond's depth?

A. Yes sir, we have some measurements made of that.

Q. What is the depth of Dustin Pond at its deepest?

A. I have never measured the water in Dustin Pond.

Q. What is the width of Dustin Pond, if you know?

A. Dustin Pond is about four rods wide.

Q. And the length of it?

A. Well, the length of it would be a little, about a mile and a half the way it runs, that is in a crescent shape.

Q. The body of water that you call Old River and is sometimes called Pecan Lake, approached the Mississippi River on the East and West, or North and South?

A. Well, you may say east and west and north and south, it is simply a horse shoe.

Q. Now, at the two ends of it, what is the distance of the water to the Mississippi River in the low water?

A. In the water, from the west end?

Q. Yes?

A. Well, from the west end to the Mississippi River, would be about two miles I guess, or a little better.

Q. And from the east end to the Mississippi River, what is the distance?

A. Well, that would be a good deal longer from the east end,

78 quite a bit longer, I guess, would be with the water would be, over three miles.

Q. What is there at each end of the lake, if anything, in the nature of a depression?

A. There are a lot of small willows, regular willow swag.

Q. How about that?

A. Comes about half way up going to the timber.

Q. How is the timber between the two ends of this lake and the river?

A. Well, it is just an ordinary growth timber, I should judge that the timber possibly would be along from fifty to sixty, to sixty-five years old.

Q. That extend or not to the bank of the river?

A. Yes sir.

Q. How are the banks of the river, and are they caving bank, or not?

A. Well, pretty hard to tell now today whether they are caving banks or not on the east end as it is filled up, those banks, are not caving banks today.

Q. In high water when the Mississippi River is up at the top of its banks, is there a current or not through there anywhere?

A. Yes sir, there is a current there.

Q. Where is the current?

A. The current leads right south.

Q. How does it flow with reference to the river, or Pecan Lake, as it is called?

A. Well, it flows right in to Old River at the south end.

Q. Which way does it flow?

A. Flows south.

Q. You mean southwest, or what?

A. Flows south right from this present Mississippi River. The current flows south.

Q. How is the current between there and the island?

A. Well, that would be right on the island.

Q. Well, I mean between Old River and the island, where is the strongest current when the river is up?

79 A. The strongest current is in Old River on the west side.

Q. Can you tell, from your observation of the timber growth between Dustin Pond and Old River how old those trees are?

A. Well, between Dustin Pond and Old River, I have stated before I think after you get south by the end of Dustin Pond which is the main ridge there, which shows the marks of the old original banks, then you get into a smaller growth of timber, but it is not exactly a small growth of timber, you will find cottonwoods there that is 35 and 36 inches in diameter, and as you go on south to the banks of the Old River, you will find where your timber is a little smaller.

Q. As you approach Old River, it grows larger or smaller?

A. Smaller as you approach Old River.

Q. Could you approximate the age of it, on this crossing, from the observation of it, and experience as a timber man?

A. Well, that's quite a question, now the growth, the timber shows

today that there was some of that timber that grewed, and was considerably older, but at the north from the Dustin Pond, after you strike the second growth timber, as we call it as it is as you go down to the Old River, the Old River bed today.

Q. The question was, whether from your experience as a timber man, you could approximate the age of the timber from your observation of it on those accretions?

A. Well, I always think I do.

Q. Well, give the jury some idea about that?

(Fitzgerald:) We object, unless he shows he is competent to do that and is an expert of that sort; now if he says it is quite a question—

Q. How long have you been engaged in the timber business?

A. Well, about my lifetime, ever since I was big enough, thirty-five years.

Q. How old are you?

A. Fifty years of age.

Q. How long have you had experience in cottonwood timber?

80 A. Since 1896.

Q. And what has been your experience, what extent have you been experienced in cottonwood timber?

A. Well, I have estimated a whole lot of it in the different parts of the country.

Q. What do you mean by estimating it?

A. That is estimate the amount of timber would be on certain pieces of land.

Q. What way, have you, if any, of determining the age of a tree by observation?

A. Well, that is, in the cottonwood line.

Q. I mean a cottonwood tree.

A. Yes, well, by the size of them, and the place they grow on.

Q. Can you or not give a correct, approximately correct idea of the age of the trees from your experience and observation?

A. No, I wouldn't say that I would.

Q. How near can you come to it?

(Fitzgerald:) I object.

(The Court:) I sustain the objection.

Defendant excepts.

Q. You say you can't give an approximate idea of the age of a tree from observation?

A. I cannot, not right—

Q. Referring again to the field you say had been in cultivation for certain years that you know of on the island, I will ask you to what extent, if any, there was any fence around that field or any part of it?

A. Yes sir, there are fences on all of those fields, that is on the island, had been.

Q. How long have those fences been there?

A. Well, they were there, when I first noticed them here along about six or seven years ago.

Q. How many years ago?

A. About six or seven years ago when I first noticed the fence there.

Q. Had you or not been there before?

81 A. Oh, yes sir, they were old fence- but I hadn't seen them until I knew the island in the estimation of timber.

Q. Why hadn't you seen them before that time?

A. Because I hadn't run in those fields.

Q. Hadn't been on that part of the island?

A. I was all around there.

Q. How long do you say you remember seeing this fence there?

A. I remember seeing this fence there for seven years.

Q. Now, there is or not a little prairie or open field, cleared land down near the east side of Dustin Pond?

A. Of Dustin Pond, yes sir.

Q. What is that known as?

A. That is known as the Plum Orchard.

Q. What is it?

A. It is a little old field.

Q. What is it with reference to being a plum orchard?

A. There was some of those red plums there, I ate some myself out of there.

Q. What fence is there?

A. An old barbed wire fence.

Q. How long has that been there?

A. I haven't noticed that any longer than seven years.

Cross-examination:

Q. Mr. De Chau, I believe you stated that you were not a civil engineer?

A. I am not.

Q. You never established the corners of Horse shoe Island?

A. I did not.

Q. You don't know then where the corner is between Sections 22 and 23?

A. I do not.

Q. Do you know where the corner is between Sections 11, 14, and 15?

A. I do not.

Q. You don't know what part of that island is original shore, and what part is accretions?

82 A. Well, there is a cut-off there on this side, on the east side of the field, the first field, which everybody always told me, that was cut off of the old river.

Q. It is what they told you?

A. That's what they told me.

Q. But, you don't know?

A. So far as I,—I don't.

Q. You still don't answer the question, do you know what was original land and what was accretions?

A. Well, there is some of that land there that shows where this big cane bridge, looked to me to be the original line of the State of Arkansas on the island.

Q. Wherever you find cane then growing, you consider that original?

A. Well, that is old timber, and it is very high and fine.

Q. How much of that Horseshoe Island, the original land is there now, about how many acres?

A. Be pretty hard for me to say, I couldn't answer that.

Q. I thought you were familiar with it?

A. I am familiar with it.

Q. Can you approximate how much?

A. No, I couldn't the way it runs around there, it is a hard thing to do, unless you run the survey from the State of Arkansas in there.

Q. Can't you tell from the edge of the timber about how much?

A. Well, I expect I can as far as that is concerned.

Q. Well, have you done it?

A. But I never paid much attention to that, I was cruising the island to cut all of the timber between those cut-offs.

Q. You can't say then whether there is a thousand acres, or five hundred?

A. I can't.

Q. Of the original territory?

A. I cannot.

Q. Don't you know there is more than five hundred acres?

83 A. Well, I should judge there would be, but then I am not prepared to say how many acres there were.

Q. I thought you were familiar with all of that?

A. I am familiar with the island.

Q. You live in Michigan?

A. I used to live there.

Q. The Rust Land & Lumber Company is a corporation from Michigan?

A. I have been with the Rust Land & Lumber Co. for sometime.

Q. That is a Michigan corporation?

A. I think they were incorporated in Wisconsin.

Q. You have been working for them for a long time?

A. Long time.

Q. How long?

A. Over twenty five years.

Q. How long have you been working for them down on this island?

A. The first I went on the island was in '96.

Q. '96 or 1906?

A. 1896.

Q. Did you go down as far as the land from which this timber was cut in '96?

A. I did, went all around it.

Q. You went all around it then?

A. Yes, sir.

Q. The next time you went around it was when this timber was cut?

A. Oh, no, I went around that a hundred times since that.

Q. How did you go around it, in a boat?

A. Walked around it, went around in a boat and every way.

Q. How often did you go around it?

A. I go around it probably five or six times a year.

Q. Every year since that?

A. Every year, no not since that, I went away after that.

Q. Where did you go?

A. Out in California, and Mexico.

Q. How long were you gone?

84 A. I was gone several years, six or seven, or eight years, more or less.

Q. When did you come back?

A. I come back here ten years ago.

Q. Now, isn't it a fact that you are claiming as accretions to Horseshoe Island, all of the lands in that horseshoe bend where the Mississippi River used to be, plum up to the Mississippi shore?

A. Yes, sir.

Q. All of that accretions you claim belongs to Horseshoe Island?

A. Well, inside of that Old River.

Q. Making that five thousand acres of accretions?

A. No, I don't think it would make that much of accretions.

Q. How much then?

A. Well, I don't just exactly know how much it would make, but I don't think there is that much in the whole island.

Q. Well, how did you get your idea that there is about that much?

A. I don't get no idea of anything.

Q. You don't fix any amount?

A. No, sir.

Q. It is several thousand acres, isn't it?

A. Well, I don't know what you call several; now, I would call there is probably three or four thousand acres in the whole island.

Q. You don't know what several means then, well how is it that you know so much about the age of this timber, if you can't tell about how many acres there are?

A. Well, I can tell, if I see a tree, what size it is, and form an idea as to how long it has been growing there.

Q. You ever count the trees?

A. Great many times I have.

Q. Counted all of the trees in that accretion?

A. Oh, no, but I have counted in parts, portions of it, formed up grades, get them up.

Q. You don't know anything about the Mississippi Shore, do you, the corners of the land on the Mississippi Shore?

85 A. Well, I know where several of them—

Q. Well, do you know where the northeast corner of Section 6, Town. 28 Range 4 West, in Coahoma County is?

A. Section 6.

Q. Yes?

A. I do not.

Q. Do you know where the corner between six and seven, and Town. 28, Range 4 West is in Mississippi?

A. I do not.

Q. Now you don't know anything about the corners of the lands in Mississippi, do you?

A. I know the corner of Sections 10, 11, 15 and 14.

Q. In Mississippi?

A. In Mississippi, Coahoma County.

Q. How did you locate that point?

A. Located it with a civil engineer.

Q. You did it yourself?

A. No, I did not.

Q. How, did you know then it was the corner?

A. Well, a man was up there that had these lines run out, and showed us the post that was driven there.

Q. Well, where is the corner between Sections 11 and 12, on the south boundary line?

A. Eleven and twelve?

Q. Yes, how far from the levy?

A. Oh, I don't know, I don't think it is over 16 or 17 chains.

Q. The levy runs all along Dustin Pond and up north?

A. The levy, no, sir.

Q. The levy runs all along near Pecan Lake on north between McKee's house and this island, doesn't it?

A. Well, I never heard of Pecan Lake, but I understand——

Q. Well, you know what we are talking about when we say Pecan Lake?

A. I know the old river, the levy runs around that old river.

86 Q. Just upon the hill all around?

A. Right close to Old River, that is to a point about center of Section 11, north and south.

Q. And the Rust Land & Lbr. Co. claims all of the land then up to that levy, all the way around in that bend?

A. No, they don't, they claim the land north of the stream, that is north of the levy.

Q. North of the stream, what stream, Dustin Pond?

A. No, not Dustin Pond, not as they have it marked but Old River.

Q. Old River?

A. Yes, sir.

Q. Now, don't you know, as a matter of fact, that Old River, that you call Old River, doesn't run up to the Mississippi river on the north, running north?

A. Well, there is two outlets, one coming in there, and one going out of there.

Q. Don't you know, as a matter of fact, Capt. McKee had a big field down there near his house in this bottom, extends away out, and

the only stream there is between Capt. McKee's field and the Arkansas shore, and it is near the Arkansas shore?

A. I know there is a question of lines right near the Rust Land field and goes in, in that lake, I have followed it several times, not one time, several times.

Q. It is not solid land all the way across there where McKee has his field, away out?

A. It is west of McKee's field.

Q. And near the Arkansas shore isn't it?

A. You don't tell it was the Arkansas shore on the west side of that cut-off.

Q. There is a high bank there isn't there?

A. Not very high.

Q. You have got a field near there?

A. Yes, sir.

Q. Belongs to the Rust Land & Lbr. Co.?

87 A. There.

Q. Been in cultivation for thirty or forty years?

A. Been in cultivation a good many years.

Q. Isn't that on the main land?

A. That's what they tell me it is.

Q. The stream isn't very far from that?

A. No sir, it is right on the east side of that.

Q. Why was it that the Rust Land & Lumber Co. filed a suit against McKee for that timber on the east side of that stream, between there and his plantation several years ago?

(Montgomery:) We object to that.

Q. There was a law suit of that kind wasn't there?

Defendant objects.

Court sustains the objection.

Plaintiff excepts.

Q. Isn't it true that you had a litigation with Mr. Miller about some of the land, cut on what we would call Section 6, understand?

A. I don't know anything about that.

Defendant objects to that.

Q. Now you claim, I believe, that these are accretions to Section 22 and 23?

A. That what it is, accretions to 22 and 23.

Q. Don't you know that all of Sections 22 and 23, and the corner, a large part of Sections 14 and 15 was washed off by the Mississippi River prior to 1848?

A. I don't know that.

Q. Well if it is true that the corner of the northwest corner of Section 6, which is on the west side of the Mississippi levee, that between that corner and Section 23, east boundary of Section 23, in Arkansas, as shown by survey of the Government, in 1815, is only about a quarter of a mile, do you know that?

A. I do not.

Q. Well if that is true, don't you know that the Mississippi river
88 bed big enough to have carried off the water of the Mississippi
River, after that survey was made in Arkansas by the Govern-
ment?

Defendant objects because it calls for an opinion of the witness.

(The Court:) I sustain the objection.

Plaintiff excepts.

Q. Now, you speak of this land from which the timber was cut,
of course, you know that that is an island, and has been all along
don't you?

A. Well, it was an island when I saw it, been an island ever since
I have been around there.

Q. Isn't it surrounded by what you call Old River, on the south?

A. On the south.

Q. And Dustin Pond on the north?

A. No.

Q. And west?

A. No, Dustin Pond don't come on the north.

Q. I am talking about the lands from which the timber was cut?

A. Where the timber was cut.

Q. Yes?

A. It was between Dustin Pond and Old River.

Q. And Old River, alright, then on the east, a stream from
Dustin Pond in a loop, extended around, and joined on to what
you called Old River, that's true too isn't it?

A. Dustin Pond joins on to Old River.

Q. At that end too?

A. Not on that end.

Q. At the east end?

A. No, not on the east end, but it does on the west end.

Q. Referring to this map?

A. Well, I don't know anything about that map, I know some-
thing about Dustin Pond.

Q. Well, I want to call your attention to the location of points
on that map, so this particular blue line here represents what
89 you call Old River, what is marked Pecan Lake?

A. Yes.

Q. And the upper stream represents Dustin Pond?

A. Very well.

Q. The map shows the drainage of Dustin Pond and the drainage
of Old River, or Pecan Lake, running out in the direction of one
another, doesn't it?

A. No it don't, this one here springs off here, while the other
one springs off there, one to the west while the other one northeast,
and then northwest.

Q. You say that there isn't a bayou that had water in it, holding
water all the time that runs around from Dustin Pond to Pecan
Lake at the east end?

A. I never saw it that way, never did.

Q. Are you prepared to say that isn't true?

A. I am, I never saw it this way, I went across this stream all right, that is a little willow slough there, but I never crossed it here.

Q. You never crossed it?

A. Never did.

Q. Now, I want you to look on this map, taking that to be correct, the correct location of Pecan Lake and Dustin Pond exactly where the nearest cultivated land that you say that the Rust Land & Lumber Co. owns?

A. Right in here.

Q. Take a pencil now and mark that, you see there is Section 22, now mark with reference to that, where it is, now put your initial in there—well put a star, make a star in the middle of that?

A. I marked field there for him.

Q. I will ask the witness to mark that so it can be seen?

A. I did.

Q. He put a round mark there, but there is so many on the map that you can't tell which it is, I asked him to make a star there and he refuses to do it?

(The Court:) Make some distinguishing mark.

90 A. Now, that little old field.

Q. Alright sir, now you have made a star, have a star there, that represents the point where you say the plum orchard is?

A. That's where I figure the plum orchard is, now that may not be just right, but I figure it is there.

Q. About how far is it from Dustin Pond?

A. Well, just about forty or sixty rods, I should judge, west of Dustin Pond.

Q. How far is it from that little fork in Dustin Pond, where that little willow slough that you spoke of came out?

A. Well, I can't tell, I never noticed that, possibly a little less than a half mile.

Q. Then, you mean to say that Dustin Pond runs higher up than is shown on the map?

A. Dustin Pond don't run as far as that is there, alright for me.

Q. Doesn't it run further north?

A. Yes sir, I think it extends possibly further north; I never paid much attention to it.

Q. And the northern end of it is closer to that field you spoke of?

A. No, the north end of that field would be about the same distance I think, a little further away, turn northwest.

Q. If it is about a half a mile from this fork here, it would be a quarter of a mile from that end, as shown on the map, wouldn't it?

A. No, it is not a quarter of a mile, it is less than a quarter of a mile, this field, might not have put this just right there.

Q. Is that plum orchard in cultivation?

A. No sir.

Q. You have never known it to be in cultivation?

A. I never have.

Q. Just a little plum orchard?

A. Yes sir, there is some little plums on there.

91 Q. Don't you know that the Indians planted this plum orchard?

A. No, I don't know anything about that.

Q. You don't know then whose plum orchard it was really?

A. I don't, I know that I have eat some of the plums off of the trees there, I don't know who growed them?

Q. Now, where is the other field that you were talking about, locate it by marking another star?

A. Well, now, there is one in a big field there, up in here, and here, right close to a little bayou, I should judge now, I don't know anything about this map, but I know—

Q. Well, go by the Sections there, 10 and 11.

A. It would be located in 10 and 11 provided, I suppose you carry that line from Arkansas, now I run that in there and might have brought it in 14, I don't know, I wasn't looking for lines on that island.

Q. That is the other you locate on 15?

A. Yes sir.

Q. Is that or not in cultivation, the one in 15?

A. Yes sir, all of that big field is in cultivation.

Q. Now, that is on high land, isn't it?

A. Yes sir.

Q. That is on the original Arkansas territory, original timber around there?

A. Well, it is my understanding it is.

Q. And never was in the bed of the river, where that field is?

A. No sir, I don't think it was.

Q. Well, I want your opinion about it from the appearance of trees?

A. From the appearance of trees, I don't think it was.

Q. I believe you stated that the land between Dustin Pond and Old River where they unite at the north end was cane, ridge high land?

A. I did not.

Q. Didn't you state that?

A. I did not, that is a low swag, swamped land.

Q. Where was it that you put that high land yesterday
92 when you?

A. I put it up here.

Q. Up there on the island?

A. Yes sir.

Q. Up there on the island?

A. Yes sir.

Q. Now did you ever follow the course of Pecan Lake, towards the north?

A. I did.

Q. Does it come out into the Mississippi River, extend all the way up?

A. Yes sir, the water doesn't and the water goes up within a few rods of the township line between 28 and 29, grows up into willows then about, a little over, about a half a mile, a little less than a half a mile, I think that that would be about the distance, then we get a narrow channel, which is made up, and there is water in there, the banks are from all the way from ten to fifteen feet deep, and there is a narrow channel that leads out to the present Mississippi River, from the end of this pond.

Q. Water in it?

A. Yes sir.

Q. But, that is not connected with Old River?

A. The water isn't in low water.

Q. It is filled up?

A. It is filled up, it is sandy.

Q. Isn't there a lot of low depressions and bayous etc. between that and the Arkansas shore, all along in that accretion land?

A. Well, not after you get north of the lake, but after you get north of this water—

Q. North of what, north of the Range line?

A. Yes sir.

Q. North of Range 5?

A. Not, Range, but township line, and you go north of the township line, then there aint only about the width of the Old River, where you get high bank, that is middling high, I would
93 say probably six or seven feet high, somewhere's along there, which I would take to be the old Arkansas shore.

Q. Well, now, above that and above Dustin Pond up to the Mississippi River, that accretion land in there, isn't it very low and flat?

A. That is low land, very low flat.

Q. Small timber?

A. Well the timber varies, different sizes.

Q. Willow growing in there?

A. Some willows right at the edge of the water, way back, and then get into cottonwood.

Q. That seems then to have been the last land that was filled up doesn't it from appearance?

A. Next to this water, it does, to be the last land that was filled up.

Q. From that township line on up to the Mississippi River in that accretion land seems to be the last that was filled up, the timber is small.

A. The timber isn't smaller than any part of this; in fact, it is larger.

Q. You have just stated it was very small timber?

A. Right along the water's edge, and in the channel in here.

Q. Well, in the bed of the Old River on the west side of the island after going north of Dustin Pond?

A. Yes sir.

Q. Considerably north of that to the Mississippi River, isn't that there low land in there and very small timber?

A. It is not as large timber after you get up there three quarters of a mile going north with the river.

Q. From Dustin Pond, three quarters of a mile then, it is large timber again?

A. Large timber.

Q. But, there is a low place in there?

A. There are long willows just as you go out to the end of the lake.

94 Q. Well, I mean all of that accretion in there, that accretion land?

A. Well, that is not, that is good timber.

Q. Isn't that very scattering, and very small timber in there?

A. No sir, it is not, it is good timber.

Q. Why did you say a little while ago, it was small?

A. Right down here I told you, but when you, go out to the Mississippi River.

Q. I am talking about three quarters of a mile?

A. Three quarters of a mile from here.

Q. Yes?

A. Yes sir, that is al- right, right along the edge of the river.

Q. Lowland?

A. Not lowland, that is made up today by sand, but the timber is a little small on there, right in the channel of where the old river used to be.

Q. Do you know the way that was filled up?

A. I do not.

Q. Do you know whether that was filled up or not, when this cut-off was made in 1848?

A. I dont' know anything about it, it was that way when I saw it.

Q. Is there any way for you to tell?

A. No sir.

Q. No man knows?

A. I won't say about that, I know I don't.

Q. I show you a township map of Township 28, Range 4 West, in the State of Mississippi, and call your attention to a body of water marked "Mud Lake" to the west of Section 6, and north and west of Section 7, and to a strip of land on the west border of Mud Lake, and then beyond that, marked "Mississippi River" do you know anything about that Mud Lake?

A. I do not.

Q. What is the usual width of the Mississippi River?

95 A. Well, that is a pretty hard question for me to answer, they call it all kinds of ways, I expect it is, I expect at different points I never triangulated the Mississippi River, I never measured it.

Q. Isn't it usually three-quarters of a mile, to a wide mile?

A. That is the ordinary opinion of the people, but there is a whole lots like me, don't know.

Q. Did you ever see the Mississippi River as narrow as a half a mile from high bank to high bank?

Defendant objects to that.

(The Court:- I overrule the objection.

Defendant excepts.

A. You asked me if I ever saw the Mississippi half a mile from high bank to highbank?

Q. As narrow as a half a mile from high bank to high bank in this part of the country?

A. No, I don't think I did from high bank to high bank.

Q. It wouldn't be large enough if it was that narrow, to carry off the water, in your opinion?

A. I don't think it would, I don't know though.

Q. The land in controversy and all of the Horseshoe Island is west of Mud Lake as shown on this township map, isn't it?

A. Well, I should judge to be north, and some of it east, that line, that would be my opinion, that range line, it would go right through that island.

Q. The range line would go right through that island?

A. Yes sir.

Q. Well, let's refer to the survey of the Arkansas shore and see about that, this is the range line, isn't it?

A. Well, I don't know, I can't tell on that map, that ain't much of a map.

Q. Well, you know the range line that, do you mean the range line or the township line?

A. I mean the range line, you show me something of the range line, and township line both there I don't know which you want me to answer.

96 & 97 Q. You spoke about the range line?

A. Here is the range line and here is the township line.

Q. Range line is to the west of Sections 7, that would go through it al- right you say?

A. Yes sir.

Q. Extending north would go through the island?

A. That's my impression.

(Maynard:) Now, I want to introduce this township plat, in reference to the questions we have propounded to the witness.

(Montgomery:) Let that go in for the present, and a certified copy can be substituted; I have no objection.

The said township plat referred to is by the stenographer marked Exhibit No. 2 and the same is in words and figures following:

98 Q. Now, I call your attention to the township map, of township 28, Range 5 West, in Mississippi, showing a survey made by the Government in 1853, and 1833, now, you will notice on that map a forked stream to the west of the Mississippi River running through Section 3, and Section 10, and uniting on Section 10, and flowing south through Section 15 into a big Cypress swamp, did you ever go over that part of the territory?

A. Is this in 28?

Q. Yes, 28, 5?

A. Yes sir, I have been in Section 3.

Q. Section 3 and Section 10, now isn't it a fact that your Old River, or Pecan Lake has cut through into the east branch of the stream I have mentioned?

A. No, and don't show it.

Q. And has run north up that stream?

A. Don't show anything of that sort.

Q. Isn't it so located on the map exactly where this is located?

A. No sir.

Q. That stream, is that stream still there running through Section 3, or is it now in the bed of the river?

A. I can't tell you that, but I know there is big cane break-s all along there.

Q. A big cane ridge where?

A. All along here.

Q. From all up in 3, both banks of the stream?

A. Clean up to the t-ship line.

Q. In Section 3?

A. Yes sir.

Q. Township 28, Range 5?

A. Yes sir.

Q. On both sides of the stream high cane land?

A. On both sides of the stream, I don't know what you call the both sides of the stream.

Q. East and west side?

A. I never seen anything of this cane, might have been filled up.

99 & 100 Q. I thought you said that it was there?

A. I did not.

Q. Where is it?

A. I don't know where it is.

Q. What did you say so for?

A. I don't say that I did.

Q. You didn't say that in Section 3 was high timber on both sides?

A. I said it was high cane, right along this land in here.

Q. Then it is high cane along in the southeast quarter and the northwest quarter of Section 3, is high cane?

A. In the southeast quarter of Section 3, there is high cane all along that old river.

Q. High land, original land?

A. Yes.

Q. Shows it is original land?

A. Yes sir, I call it.

(Maynard:) I introduce that township plat, the same being by the stenographer marked Exhibit 3.

The said township plat is in words and figures following, to-wit:

101 Q. How far is the original land of Horseshoe Island, Arkansas *Island* from the north end of Dustin Pond?

A. Well, the north end of Dustin Pond, it is not very far, no, it wouldn't be over a quarter of a mile any way.

Q. Well if the north end of Dustin Pond ends midway at the quarter section post of Section 22, extended, then how far do you say it is to the main land of Arkansas?

A. I just told you, I just answered that question, I don't think it is over a quarter of a mile.

Q. Don't know exactly how far Dustin Pond ought to be extended on this map north, you know, and so I will ask you with reference to a particular point from the quarter section corner of 22, how far north is it?

A. I haven't got any particular pond to answer from Dustin Pond.

Q. Doesn't the map show, and I mean by map, the survey of the United States Government, that from the quarter section post of 22 extended on the west boundary line of 22, extended to join the point of 22 this is old original territory, that it is a half a mile?

A. I don't think it is that far, I don't think it is a half a mile.

Q. Does it show here?

A. I don't think it is over a quarter of a mile, if it is that.

Q. Well if that point of 22 washed away, and the original territory is higher up than what this original Government map shows to be now, then you are mistaken about how far it is, ain't you?

A. Well, I don't know anything about that, I give you my opinion on the distance from the end of Dustin Pond to that high land.

Q. Now, don't you know that along the south borders of Section-22 and 23 in that accretion land, that there is a low depression and stream now?

A. No I don't.

Q. And that it is very small timber in there?

102 A. I do not, it is good timber in there, that is taking the evidence.

Q. You mean to say that that is as high as the land around Dustin Pond that is in controversy?

A. It is higher.

Q. It is higher?

A. It is higher.

Q. And how far down does that extend, that high land?

A. It extends down in here.

Q. All of the way down below the plum orchard, how far below the plum orchard?

A. Oh about twenty rods.

Q. When were you over that land?

A. I was over that land last week.

Q. Over all of it?

A. No, not all of it, but I have been over that part.

Q. Did you walk around that to see whether or not that was high or low?

A. I know all about that, I didn't have to walk that to find that out.

Q. Don't you know you can't get, go through there in the winter, without bogging up?

A. Oh, I have been there in the Winter and Summer both too, I have been there with boats and canoes and all kinds of shapes.

Q. Is the ground very damp in there?

A. Oh yes, it may be damp, everytime you get a lot of rain.

Q. Swamp lands?

A. Oh no.

Q. No swamp lands?

A. Oh no, you have got to get down South towards the river bank on this old river before you get to the low lands.

Q. Don't find any in here either?

A. That is high, up pretty high around there, clean to the Mississippi River.

103 Redirect examination:

Q. Counsel asked you about that field around the plum orchard, do you know who built the fence around the plum orchard?

A. Why, I don't know as I do, now I think, Mr. Hoffman though built the fence around this field.

Plaintiff objects.

Court sustains the objection.

Defendant excepts.

Q. Do you know who built that fence and keeps it up, keeps it in repair?

A. No, no one does.

Q. Is it a complete fence now, all around it, the main orchard or not?

A. Some part of it is down, and other parts stand there with an old wire in it.

Q. The counsel asked you about the certified plat of the Government surveys of 32 of Mississippi, of Township 28, Range 5, this plat now, the head of the map is north, now here is the Mississippi River, what is the difference between the traverse of the banks of the Mississippi River, the course of it as shown on that Government map and the traverse of the south bank of the present Old River, that you spoke of?

A. Well, I couldn't tell any difference.

Q. I mean as to shape?

A. That is as to shape, that is the shape I find the Old River in today.

Q. Counsel asked you, Mr. De Chau, about whether the place where the—

(Mr. Maynard:) I would like to ask one or two more questions I overlooked.

(Montgomery:) Certainly.

Cross-examination:

Q. You spoke about the cutting of some overgrown timber on this land in controversy by the Rust Land & Timber Co., did you see that cut?

A. The down timber, the timber that was down.

Q. Yes?

104 A. I did.

Q. Did you see it cut?

A. Seen it cut after it was cut, and scaled the timber after it was floated out.

Q. When was that cut?

A. Cut about six years ago, five years ago we cut some.

Q. Whereabouts?

A. Well now, there was no particular spot, we simply went on this island there, and whenever we found a down tree, we cut it.

Q. Didn't cut it between Dustin Pond and Old River where this timber was cut?

A. We cut and floated, yes sir, right there, Charley Sherman run the float over.

Q. Did you cut any on this land where the timber was cut?

A. Well, I didn't look at that little corner, my men and I did the rest of it.

Q. You don't know then?

A. No, sir, I don't.

Redirect examination continued:

Q. Did you cut any between Dustin Pond and Old River?

A. We did.

Q. You didn't cut the same trees that they cut this time?

A. No, perhaps, we didn't cut anything but what timber had fallen by wind.

Q. Counsel asked you whether the land between Old River and Dustin Pond was an island or not, I don't exactly understand your answer to that question, whether the land between Old River and Dustin Pond is an island where this timber is cut?

A. It is not an island today.

Q. Has it, or not, ever been an island since you knew it?

A. Not since I knew it.

A. What about this little small stream that runs into Dustin Pond up towards the west?

105 A. It is simply a little low swag runs in there, with small willows, about twenty feet wide.

Q. How long is it?

A. It runs right out, I never crossed anywheres else except—

Q. Does it or not run into Old River, that little small stream?

A. No sir.

Q. Does it come out of Old River or not?

A. I couldn't say that, I never saw any stream after I left Dustin Pond?

Q. What connection has that little wash out stream with Old River?

A. None whatever.

G. W. CALHOUN, a witness introduced for and on behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Q. What is your profession?

A. Land surveyor.

Q. How long have you been engaged in that profession?

A. Eleven years.

Q. Have you made any surveys in this part of the country?

A. Yes sir.

Q. Did you make any surveys for the Rust Land & Lumber Company of the lands in controversy in this suit, or that neighborhood?

A. I did.

Q. State to the Court and jury what you did in connection with the making of a survey, who was with you, and what lines you run, what field notes you followed, you followed the Government field notes did you in 1833?

A. I did.

Q. What lines did you run?

A. I run the lines of Section 11 and 12 and 3, Town. 28, N. Range 5 West.

Q. Have you finished stating the lines you ran in that survey?

A. No, I ran a meandering line on the south bank of what is now Old River, and other lines.

106 Q. Anything else?

A. I ran the line around the timber that had been cut north of Old River.

Q. Anything else?

A. I made certain other measurements, etc.

Q. Now, Mr. Calhoun, I ask you first who was with you when you made that survey?

A. Mr. De Shau, and Mr. Schlierholz.

Q. Mr. Schlierholz sitting right there?

A. Mr. Schlierholz helped us.

Q. Did you ever see this map before that I hand you?

A. Yes sir.

Q. Who made that map?

A. Mr. Schlierholz.

Q. Was that map made from your survey?

A. It was.

Q. Does that map accurately represent the lines run by you?

A. It accurately represents that portion of the line run by me.

Q. As many of the lines run by you as are on that map, are they correctly represented on that map?

A. They are.

Q. Who made the map did you say?

A. Mr. Schlierholz.

Q. Did you see it made?

A. Yes sir.

Q. Did you furnish him your notes to make it from?

A. I did.

(Armstrong:) We offer this map.

(Fitzgerald:) We object to the introduction of this map for the reason that it attempts to delineate first by a red line the noted, probable Arkansas Shore in 1833; another thing it attempts to do is to outline from one end of the map to the other the old channel of the river, and it doesn't state in there at what date this channel of

the river was,—it was the channel or whether it was the channel of the river at the time that cut-off, or whether it is the channel of the river after or before the cut-off; and we say he might testify in his testimony as to where he thought a channel of the river located, but he has no right to present a map here, showing a probable shore line of Arkansas. We are not trying this case on probabilities.

(The Court:) I overrule the objection.
Plaintiff excepts.

Q. Now, Mr. Calhoun, take that map and show on it, show the first, the lines you ran and the measurements you made?

A. I run the south line of Section- 11 and 12.

(Fitzgerald:) At the same time, I desire to make another objection to that map; 3d. That the map wasn't made by the surveyor, but it was made by an attorney in the case, who didn't run the lines himself.

(The Court:) I overrule the objection.
Plaintiff excepts.

Q. Now, Mr. Calhoun, show on the map what lines you ran and what measurements you made?

A. I ran the south line of Section- 11 and 12, east line of Section 12, up to what is now Old River, the center line of Section 12, up to what is now Old River, the lines between Section- 11 and 12, the center line of Section 11, up to what is now Old River, the west line of Section 11, up to what is now Old River; then I traversed the west bank of what is now Old River up to the north line of Section 10 to a post quarter of a mile west to where the corner to Section- 2, 3, 10 and 11 would be in Old River; traversed the west bank of what is now Old River through Section 3 north; the lines of Sections 2 and 3 and continued north to the south line of Section 35; ran the line between Section 35 and Section 2 West to the Government corner to Sections 2, 3, 34 and 35; ran what would be the north line of Section 11 east to a point at the northeast corner of where the timber was cut on the north side of Old River.

Q. What indicates on the map the place where the timber was cut?

108 A. The red portion marked "An area of 27 acres."

Q. What is the width of Old River here?

A. Average width is 850 feet.

Q. Do you know the depth?

A. The depth is from 8 to 19 feet.

Q. What is the distance from this bank of Old River to Dustin Pond, across the place where the timber was cut?

A. Three-eighths of a mile, approximately.

Q. Now, if you follow out, what direction is that?

A. This, north.

Q. If you follow out north from Old River to the present channel of the Mississippi River?

A. I walked from the head of the water in what is now the north-west and into the Old River, Mississippi River, following the channel.

Q. I will ask you what indications there exist there of any channel?

A. There is a channel there that is very much in the shape of a bayou, an average width of a hundred feet and depth of 18 to 20 feet high banks.

Q. What is the heights of the banks on that south side of Old River opposite the place where the timber was cut?

A. Average height, I should say, would be 8 to 10 feet.

Q. How far out did you follow this channel, north from the head of Old River, did you go to the present Mississippi River?

A. I did.

Q. Is or not the channel well defined all of the way to the present Mississippi River?

A. Well defined with the exception of quarter of a mile which is filled up in the shape of a sand-bar.

Q. Between the north end of that sand-bar and the present channel of the Mississippi River what about whether or not the channel is well defined?

A. Well defined, 15 to 18 feet deep, and had water in it about half of the distance.

109 Q. Now, going around the other way and going north to the present channel of the Mississippi River, did you make any observations in regard to that channel?

A. For a certain distance only.

Q. How far?

A. I should say about a mile north of where the water stops in the northeast end of Old River.

Q. Point out on that map the point where the water stops on the northeast end of Old River?

A. I can't point that out exactly.

Q. Have you any idea where that is on the map?

A. Close to the line between Sections 31 and 36.

Q. Point out on the map how much further north of that you found that channel out?

A. I didn't follow that channel north of that.

Q. Now, did you go over this country between Dustin Pond and Old River?

A. I did.

Q. Is there any difference between the size of the timber going south from the south edge of Dustin Pond to the north line of Old River?

A. There is.

Q. State what difference there is? And how the timber varies, if it does vary?

A. Going north, from the north side of what is now Old River, the timber increases in size and age until you get to Dustin Pond.

Q. Can you state the average size of the timber down here on that north bank of Old River, you know about how that timber runs?

A. Eleven to twenty-four inches.

Q. How did it vary going up to the south edge of Dustin Pond?

A. It is larger.

Q. Now going around here, at the northeast end of Dustin Pond, that is, isn't it, that the northeast end of it?

110 A. Northeast end.

Q. What about the size of the timber immediately east of that point?

A. It is large.

Q. What kind of timber is it?

A. Cottonwood timber principally.

Q. Are you familiar with the ages of timber, — you any way of judging the age of timber?

A. Yes.

Q. Had experience of that kind?

A. Yes sir.

Q. What experience have you had?

A. Well, I have made it a study, I have cut into a great many trees to find the original figures put in there when the Government surveyors made and noticed the amount of growth, and noted the number of years cut in there, etc.

Q. You think you are able to tell with a reasonable degree of accuracy the age of timber by observing it?

A. I am.

Q. What would you say the age of the timber there immediately east of a little northeast of that Dustin Pond?

A. Not less than 75 years.

Q. Is that older or younger, or the same age of the timber between Dustin Pond and Old River across the place where this timber was cut?

A. It is smaller in size and older, the timber here is larger in size and older than it is between Dustin Pond and Old River.

Q. You say here, and point to a point immediately east of the northeast corner of Dustin Pond, is that correct?

A. Yes.

Q. Now, on your map, Dustin Pond is indicated as coming to an end at that northeast point, is that the way the conditions
111 actually exist there, is that the end of Dustin Pond?

A. That is the end of Dustin Pond, yes, that is the end of it.

Q. Now, is there or not any body of water connecting this northeast end of Dustin Pond with the channel of Old River?

A. There is not.

Q. Excepting the connection at the northwest side of Dustin Pond with Old River, is there any other water connection between Dustin Pond and the channel of Old River?

A. None.

Q. In measuring the depth of the water in Old River, nearer which bank in there is the deeper water?

A. The deepest water is about one-third from the Mississippi bank.

Q. You say the Mississippi bank, you mean by that the south bank.

A. Yes, sir.

Q. Did you find a line where the Mississippi shore of the river was according to the Government field notes of the survey of 1833?

A. I located it where the line should be, measuring from the south bound-ry of a section.

Q. How is that indicated on your map?

A. Indicated by red line, marked "Mississippi Shore in '33."

Q. River line, survey of '33 Mississippi shore, that what you refer to?

A. Yes, sir.

Q. Now, Mr. Calhoun, take that map and read the map, that is, explain the various lines on it, and the tinted space and what they represent in connection with this body of land, point out the various channels and the fields and other lines that you located, show how they are represented on the map?

A. According to the survey made on the Mississippi side, the Government in '33, they gave two fractional sections—the blue space on north side of the map represents the Mississippi River as it is today; these portions shown in yellow tint, represent fields as they are today; the blue tinted spaces running south and west and north around what is now Horseshoe Island, represent the present indications of what is left of the old channel of the Mississippi River; that portion shown as Section- 11 and 12 south of what is marked old channel, or fractional, let me see, read that,—is what is left of those two fractional sections, after the ceasing of caving of the Mississippi shore, caused by the cutting off of 1848. The small space on the north side of Old River, tinted in red, and marked as being 27 acres is where the timber was cut, that is enough of the physical features of the map.

Q. Describe the red lines and black lines?

A. The red line running along the west side of what is marked as the Mississippi River in 33 southward entering Old River, passing through what is now Old River, and going out at the southeast side is the bank of the Mississippi River as it was meandered in the Government survey of '33, and the dotted line drawn parallel with it is what would have been then the probable Arkansas bank.

(Maynard:) Now, where did you get the data for that?

A. Well, the Mississippi River is pretty much the same.

Q. The data for the probable Arkansas bank?

A. I got it out of the Government field notes. Dotted line, parallel line of the water just described.

Q. I believe I asked you, if I did, you needn't answer it again, what part of the channel of the Old River is the deepest?

A. You asked me that once.

Q. And you say about a third of the Mississippi from the south bank?

A. About a third.

Q. Now what is the nature of the depth of the channel from that deepest portion towards the north bank, the other two-thirds of the way that is?

A. Gradually becomes shallower to the north side.

113 Q. What is the nature of the two banks of Old River, the south bank and the north bank, which is the higher?

A. One is higher and one is lower, the south bank is the higher one.

Q. How high is the south bank?

A. Eight to ten feet.

Q. What is the nature of the north bank?

A. It is very low and marshy and wet.

Q. How far from the south bank is the deep water in the channel of Old River begin?

A. About 300 feet would be the deepest point of the south bank on an average.

Q. I don't mean the deepest portion of the channel, I mean how far from the south bank does the water begin to have any considerable depth, is there deep water close to the bank or not?

A. Deep water close to the bank, yes.

Q. And how about the north bank?

A. The north bank is very shallow.

Q. And gradually gets deeper as you go to the south bank, is that correct?

A. That is true.

Cross-examination:

Q. Where do you live, Mr. Calhoun?

A. Memphis, Tenn.

Q. Are you in the employ of the Rust Land & Lumber Company?

A. I am.

Q. How long have you been in their employ?

A. About two weeks.

Q. Were you generally employed by them?

A. No.

Q. Do you do surveying in this part of the country often, have you been down here very often?

A. Yes, sir.

Q. When did you make this survey?

A. I made it from the 18th to the 22d, of this past month.

114 Q. On this past month from the 18th to the 22d?

A. Yes, and I worked a couple of days since.

Q. On the map?

A. No, on the ground.

Q. You were down there on the ground four days?

A. Yes, sir.

Q. And then you have worked two days since you drew the map, or since you made the survey?

A. I was on the ground five days, I have been on the ground two days since.

Q. That makes seven days?

A. Yes, sir.

Q. Now, in regard to you there, you say you ran the traverse of the Old Mississippi River as it was in '33, this red line that you have got there?

A. No, not that portion of it.

Q. You didn't run that traverse?

A. Not that portion of it.

Q. You only ran a portion of it in front of Section 11?

A. I didn't run that, I just located it, it is in the lake.

Q. You didn't run this traverse at all?

A. I did not.

Q. You put that on there?

A. Went on there from the Government plats, made in '33.

Q. What Government plats, where did you get them?

A. Why copy was furnished to me.

Q. By whom?

A. By Mr. Schlierholz.

Q. By the Rust Land & Lumber Company?

A. Yes.

Q. Now, did you run this field line in here?

A. I did not.

Q. You didn't run that?

A. No, sir.

Q. According to the scale of your map, how many acres have you got in cultivation in this field?

115 A. About a hundred and sixty.

Q. About a hundred and sixty acres in cultivation, it covers practically the east half doesn't it? I mean the east half doesn't it of Section 10, doesn't it, in the State of Arkansas?

A. No, sir.

Q. I will ask you if it covers practically the east half of eleven?

A. No, sir.

Q. Isn't this the line of eleven?

A. No, sir, each one of these squares is only a quarter of a section.

Q. Shows there is 160 acres in this field?

A. Approximately.

Q. You call this an old field?

A. That is.

Q. What sort?

A. Just an old field grown up in bushes?

Q. Do you know whether it is a field, or pasture?

A. I don't know what it was, it's an old clearing.

Q. Now down here represents said plum orchard field?

A. Yes, sir.

Q. What makes you call it a field?

A. A cleared space.

Q. You call all——

A. Fair fence is around them.

Q. Doesn't make any difference whether it has been in cultivation or not, it is a field?

A. Well, that's the way I designate.

Q. Any cleared space is a field?

A. Yes, sir.

Q. You say there is a fence around that now?

A. There is, a portion of it.

Q. Did you walk all around through here?

A. I did, yes, sir.

Q. All through there?

116 A. Not between those two points.

Q. That is, between Section 22 and 23, now did you walk through there?

A. I walked over all that territory between Dustin Pond and Old River, and in south of this field, and the north bank of the lake.

Q. But, you didn't walk directly below Section 22 and 23?

A. I did, yes, I did.

Q. You walked down the point of 22 where you have the word shore 16?

A. I walked south.

Q. Now, did you run that traverse there of the shore in '16?

A. I did not.

Q. You didn't?

A. No sir.

Q. How did you manage to run that from, did you manage to mark that on your map?

A. Put on there with the Government township plats where they show it.

Q. How could you tell where this shore of '16 was from the Government maps without triangulating the river and making the crossing here?

A. Well, there has been surveys made on the Mississippi side.

Q. Who made them?

A. Mr. Fitzhugh, I believe.

Q. Did you make your map from Fitzhugh's survey?

A. I did not.

Q. Where did you get that?

A. They are located on there in an approximate manner only.

Q. This is located approximately?

A. Yes sir.

Q. And not absolutely correct?

A. Not by actual survey.

Q. So, you have drawn lines on here, and designated them as original shore on both Arkansas in '16 and Mississippi in '33
117 by a survey made by Fitzhugh, or by some Government map furnished you by the Rust Land & Lumber Company?

A. No, I have evidence other than that, because I have walked over this territory, not ridden, crossed to there up here, and I know

the approximate distance, and I located this field from other evidence besides what was furnished to me in that manner.

Q. Now tell, Mr. Calhoun, as a surveyor, is it possible for you to locate the shore of Arkansas in '16 accurately without triangulating the river, and getting a known Government point?

A. Certainly not.

Q. As shown in 1816?

A. Certainly not.

Q. So, you certainly did that approximately?

A. Approximately.

Q. Then, where did you find any corner in here?

A. I didn't find any.

Q. You didn't find any corner there?

A. No sir.

Q. Then the whole of that portion that you have marked island, and Arkansas shore in '16 is approximate?

A. It is approximate.

Q. Now, you say that Old River channel here, you have got marked Old River channel, center of the channel in '48, what made you mark that the center of the channel in '48?

A. Didn't mark it that way.

Q. Who marked it?

A. Mr. Schlierholz.

Q. Do you concur in that?

A. Well that's a point which I don't know.

Q. Now it isn't possible, Mr. Calhoun, in all fairness to you and I both, for you to say where that channel was in '48, you can say perhaps there is an old channel there and perhaps there is an old channel there in '57 or '33 or '65 but, there is absolutely no way for you to tell where that channel of the river was in '48?

118 A. Well, it has certain physical conditions.

Q. Well, could you tell whether that was there '48 or '57?

A. Take into consideration all of the physical conditions, come pretty close to it.

Q. What could you take into consideration to say that was there in '48?

A. What was there?

Q. This channel in '48, I am not speaking of '49 or '47, I am talking about '48?

A. At that point, I am not familiar with the physical conditions.

Q. At any point again in '48?

A. Well, I can on this south side here.

Q. In '48?

A. Judging by the growth of the timber.

Q. Well now, listen, you were in the court-room here yesterday when you heard Charlie McGehee testify that the levee broke right here in '47, in '57 and washed into a cypress brake here?

A. Yes sir.

Q. And that that made Pecan Lake, are you able to get on the stand and testify that that isn't the truth?

A. Well the facts don't justify his stating it, I don't think, according to my opinion.

Q. I understand, but are you able to swear that that isn't true, just from your idea, now in '57, I speak of?

A. I don't see how it could be possibly the truth when the Government line of the survey of '37 runs down to what is now present Old River.

Q. But, doesn't Pecan Lake, run on this side of the Government line; so in '33 Pecan Lake wasn't there, the river didn't run there did it?

A. In '33.

Q. Yes?

A. Didn't run south of this red line.

Q. It didn't run where Pecan Lake is now, did it?

119 A. No.

Q. Well, doesn't the Government map show, the certified copies of the Government maps of Section 11, of Town. 28, R. 5 show that there was a piece of land between what is now known as Pecan Lake and the original shore line?

A. Didn't show Pecan Lake at all.

Q. It shows a cypress brake there doesn't it?

A. No sir.

Q. It doesn't? I am speaking of here, don't this map here, between the shore line here and what you found to be Pecan Lake, now isn't there a strip of land, wouldn't there be a strip of land between that and the 1833 survey?

A. I don't just catch the question.

Q. Where you find Pecan Lake now?

A. Yes sir.

Q. And where you find the river shore line '33?

A. Yes.

Q. If accurately surveyed?

A. Yes.

Q. Wouldn't there be a strip of land between Pecan Lake and the old '33 survey?

A. No.

Q. There would not be any land in there at all?

A. No.

Q. So then——

A. Not at that point.

Q. Well, anywhere in that, in here, in front of Section 11, anywhere in front of Section 11, wasn't there a strip of land in there?

A. There would be one acre right here, that's the only point.

Q. Wouldn't be any strip of land in here?

A. None whatever.

Q. Now, I am not going to introduce this map; I am just going to ask him a question, if that shows the original shore line of the Mississippi River, and shows these across in here, between the original shore line and this place here, that's is not correct is it?

120

A. My map is made from actual survey work done in the last two weeks, it is correct.

Q. I understand, I say if this shows land in between what is now Pecan Lake and what was once the original shore line of the State of Mississippi in '33, that map isn't correct that far?

(Montgomery:) We object to that question, because it calls for the expression of an opinion, about a paper not introduced in evidence.

(The Court:) I overrule the objection.
Defendant excepts.

Q. Now Mr. Calhoun here in Mud Lake, have you got Mud Lake designated there, there was a strip of land, wasn't there between Mud Lake, and the old shore line, wasn't there?

A. Well, I would have to refer to the township plat.

Q. Well sir, do that, if you have it?

A. I haven't it.

Q. Now, was there a strip of land between Mud Lake and the Mississippi River?

A. Shown on this plat.

Q. There is some shown there?

A. Not marked though.

Q. Well, here is Mississippi River, isn't it?

A. Yes sir.

Q. Here is Mud Lake?

A. Yes sir.

Q. There wouldn't be any use to designate it, if there wasn't something between there?

A. According to that, there wouldn't.

Q. Now, I want to ask you another question here about this old channel that you got designated there, now this old channel, what made you state that it was in '48, center of the old channel in '48?

A. I don't state that.

Q. What made you have it put on the map?

121 A. I didn't have it put on the map.

Q. Well, did anybody put it on there?

A. Mr. Schlierholz made the map.

Q. Isn't it a fact, that you knew that you had to have a channel there in '48? And that that was the reason that you wanted to make a channel there?

(Montgomery:) We object:

(The Court:) I overrule the objection.

Defendant excepts.

Q. Mr. Calhoun, let me show you, you also found this played out, and there wasn't any water in here?

A. Well, I only saw it at one point, up here, there was a little water there, I saw it.

Q. You didn't go up there?

A. I didn't see it.

Q. Well you show that you have got your channel designated over there, don't you, in '48, haven't you?

A. I didn't designate it on there.

Q. So this map then isn't made from your survey?

A. That portion of it that has to do with the work that I did on the south end is made from my actual survey.

Q. Then only that land which is in controversy here, and is shown between Dustin Pond and Section- 11 and 12, is all of the actual work you did?

A. No, I rode and stepped over this portion all up through here?

Q. I am talking about a survey?

A. That's all.

Q. That's all of the actual survey you made?

A. That's all.

Q. So this map here, when it attempts to outline the channel around here in '48, and then attempts to delineate the channel to run clear around this way was simply made from somebody else's ideas about it?

A. Well, on the west side I have stepped it.

122 Q. But, you didn't survey it?

A. Well, I did a portion of it.

Q. Well, how far did you survey?

A. About three-eight-s of a mile north in Section 35.

Q. That would put you where, just above the section line, just below the quarter section line?

A. Just about there.

Q. Then, you don't know the condition from there on, except from just riding along?

A. That's all.

Q. And yet, it is designated on here, center of the old channel isn't it?

A. What is?

Q. This mark here, this channel that runs out northeast between Section 26, along the west edge of 30 and 35?

A. It is designated.

Q. "Old Channel"?

A. Yes sir.

Q. You didn't designate it that way, did you?

A. No sir.

Q. Now, about this timber in here, Mr. Calhoun, you walked all along in here?

A. I did.

Q. That is on the land in controversy?

A. I did.

Q. And between Section 22 and shown in 16 in Arkansas and Section 11 and 12, 28, 5, in Mississippi, now you say that you found that this plum orchard, around this plum orchard, very heavy timber?

A. There is heavy timber north of it, south of it, the timber decreases in size all of the way to the lake.

Q. Well now, will you tell me between, taking the center line

of Section 11, running north and crossing to Pecan Lake on the north bank of Pecan Lake, say a hundred feet back from the 123 shore, will you tell me what size the timber is there?

A. From eleven to twenty-four inches, I would judge a little further back probably, before you get to timber of that size, two hundred and fifty feet.

Q. You have got this marked on here "Trespass"?

A. Yes sir.

Q. Where did that trespass occur?

A. It is located in that position on the map.

Q. Did they start to cutting the timber there on that bank?

A. I don't know.

Q. You walked over it, didn't you?

A. I don't know where they started to cutting the timber.

Q. It is cut pretty close to the bank?

A. Yes sir.

Q. You heard the testimony of your man, De Shau, didn't you yesterday? That that timber was cut, was between 34 and 36 inches didn't you?

A. I believe I did.

Q. Of what size did he say?

A. I don't remember the exact size that he gave.

Q. So that timber in there was pretty big wasn't it, big enough for merchantable timber?

A. Well the timber that was cut, was the same character of the timber.

Q. You walked around through there?

A. Yes sir.

Q. It is all about the same character of timber, and it is all large cottonwood timber?

A. It is not what you call large cottonwood timber.

Q. Now, how do you tell the age of a tree Mr.——

A. There is no absolute way of telling?

Q. Why, I thought you said there was?

A. I have made a study of it.

Q. I thought you said you did?

A. I don't believe I did.

Q. What do you estimate by, the rings?

124 A. No, I estimate by size, and taking into consideration the place where it is growing. I cut into some cottonwood trees and know just exactly the number of years that they were marked and find original marks and know the amount that grows over it and made a close study of it.

Q. Of course, you know that cottonwood timber in different places will grow quicker and less thick than other places, now, you heard Mr. De Shau say yesterday that he had been in timber business for about 30 years?

A. Yes sir.

Q. You heard him say that he had cut the trees and counted the rings, and that there was no way of telling how——

A. He said there was no way of him telling, I believe.

Q. How long have you been surveying?

A. Sixteen years.

Q. And during that time, you haven't always surveyed in timber land, have you?

A. Principally.

Q. Haven't done any surveying in cleared land at all?

A. Oh yes sir, I have done the biggest portion——

Q. And you have always cut in to cottonwoods?

A. I have cut into all kinds of trees.

Q. And yet, you say, during your 16 years as a surveyor, you know more about cottonwood timber, than Mr. D Shau and he has made it a study?

A. I don't think so, I don't think I said that.

Q. Now look here on this map, taking up this old channel again, that's a sore point here with me, because I want to find out exactly what you think about it, this old channel that runs around here, you propose when the current came around here, to throw the current in on Section 12?

A. Throw the current naturally on the outside.

Q. That is Section 12, now would it *may* the shore then, do you know anything about the current of rivers?

A. Well, I know from observation, I have been working on the Mississippi River.

125 Q. For the 16 years——

A. —seen caving banks, etc.

Q. Do you mean if that channel hit in here, it would make the banks all the way in here?

A. Oh certainly not.

Q. You have got the middle of the channel in here?

A. I haven't got it there.

Q. You don't propose to be responsible for your map, for what the lawyers put on it, that right, what are those criss-cross marks up here, what is that, Friars Point?

A. Yes sir.

Q. You didn't run any lines up in there, did you?

A. No.

Q. Now, I notice that you said down here these high banks in here was caused by the cut-off of '48?

A. I don't think I said that.

Q. You didn't say that?

A. No sir.

Q. I notice there to that you have got marked on the map with a red dotted line probable Arkansas shore of '33, no Government map for Arkansas in '33 is there?

A. I think the Government survey was made before that in '15 or '16.

Q. There is no map of the Government to show any survey in '33 of Arkansas is there?

A. Not at that point, none that I know.

Redirect examination:

Q. Mr. Calhoun, Mr. Fitzgerald has asked you about the parts of the map that were put on there by Mr. Schlierholz that you didn't survey, now going back to all of the point which you did survey and which do appear upon the map were those points accurate, those lines correct?

A. They were from the work I did and riding and walking over it, it is approximately correct, the entire map.

Q. I am referring now to the part that you actually surveyed, asking if that is correctly delineated on the map drawn?

126 A. It is.

Q. What other work have you ever done for the Rust Land & Lumber Company except this survey?

A. None.

Q. What connection have you ever had with them before?

A. None whatever.

Q. Now, Mr. Fitzgerald asked you something in connection with what indications there were that this body of water, which he refers to as Pecan Lake wasn't caused by the breaking of the levee in '57, what are those physical indications?

A. Well, because in '33 when the Government survey was made the meandering line on the south side of the river fills in what is now Old River, or Pecan Lake, and it was a caving bank on the south side, and continued to do so until the cut off of '48 was made.

CHARLES A. M. SCHLIERHOLZ, a witness introduced for and on behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Q. Mr. Schlierholz, where do you live?

A. I now live in Alpina, Michigan, formerly I lived in St. Louis, Mo., up to four years ago.

Q. Are you acquainted with the young man who just testified, Mr. Calhoun?

A. I met him several weeks ago for the first time in my life.

Q. What connection has he with the Rust Land & Lumber Company?

A. None whatever; he was engaged by Mr. De Chau and myself to do the surveying.

Q. How long have you been connected with the Rust Land & Lumber Company?

A. About 10 years from the 7th day of February next.

Q. What is your profession, Mr. Schlierholz?

A. My original profession is civil engineering and surveyor, and I was admitted as an attorney also several years ago.

Q. General practitioner?

A. No, I never practiced, I made land law my specialty.

Q. What is the office that you hold with the Rust Land & Lumber Company?

127 A. I am the land man of the Rust Land & Lumber Company, Free States, and Gilchrist States.

Q. What are your duties in that office?

A. I look after all land titles, examine all for purchase, look after all law suited, and attend to them relative to straightening out titles, payment of taxes, assessments, anything pertaining to land matters.

Q. What have you to do with reference to investigations of litigated matters relating to their land and timber?

A. I confer with the attorneys and work up the cases and assist in the matters.

Q. Do you or not make investigations as to the circumstances and the physical conditions and the lines yourself?

A. Yes sir, I do very frequently wherever they are in litigation.

Q. What do you know about their lands on Horseshoe Bend, or Horseshoe Island?

A. What do you mean in regard,—well, the first time I have ever been on the land was last Monday, but I have been familiar with Horseshoe Island long before ever I was connected with the Free States Lumber Company or the Rust Land & Lumber Company.

Q. In what way?

A. I was in the United States Government employ for the states of Arkansas, Mississippi and Louisiana for eight years prior to 1904.

Q. How did you become familiar with this island and these matters in that office?

A. Well, some matters came up in Phillips County in 1901 where my attention was called to it, and I was asked to make an investigation at that time for the State Land Commissioner; there was some litigation at that time, I think between the Rust Land & Lumber Company and a man named McKee where the question of a state line came up at that time.

Q. At that time were you connected with the Rust Land & Lumber Co.?

128 A. No sir, I didn't know them at all, never knew of them, I was in the United States Government employ, and I made an investigation, and went to Helena and made an investigation from the records.

Q. What records did you investigate?

A. I investigated the records, got the '63 survey, and then I had the maps of '33 survey up in Mississippi shore.

Q. Was there a traverse of the Mississippi River on the Arkansas side?

A. In '16 there was a survey of '16, which was the only one that was on file in Washington.

Q. Where were you stationed then?

A. In Little Rock, Arkansas, my headquarters.

Q. Was there a record of any traverse of the Arkansas bank in '33?

A. Yes sir, there was a very distinct and clear — of the entire river.

Q. You mean in '16 or '33?

A. Made in '33 and '35.

Q. Where was that record found?

A. I had those plats from Washington, and I saw them in Mississippi in the land office at Jackson, which I had also charge of.

Q. Have you got them with you?

A. I have got certified copies of them right here.

Q. You have certified copies of plats showing the traverse of the Arkansas bank in '16, I mean in '33?

A. Yes sir, the same map that the other party offered in evidence.

Q. And have you traverse or not of the Mississippi shore, other than those that have been introduced of '33?

A. There never has been a survey made but that one, that was the first and only survey made by the United States Government of the lands in the State of Mississippi at that point.

Q. Now, you said, I believe, that you *you* have only seen this island about how long ago?

129 A. Last November, just a few weeks ago.

Q. And what inspection of the lands there did you make, if any?

A. Went with Mr. Calhoun and watched the surveying, paid particular — to the lines, the meandering, the contour of the beds of streams.

Q. Did you ever make a map of the island, or not, and the surroundings?

A. I did, sir.

Q. Where is that map?

A. Right here, sir.

Q. From what data did you make that map?

A. I made the map, first from the data furnished by the United States Government of the survey of '33, showing the exact meanderings as given in the field notes by United States Government, then I had a survey made by Mr. Griffith for the Rust Land & Lumber Company, which started at the corner of Section- 26, 27, 34 and 35, Town. — South, Range 4 E., where he measured across the river by triangulation; and the corner of Sections 2, 3, 10 and 11 which, at the time of the 1816 survey was made, was not in existence but was in the river at that time by a distance of two and a half chains; he established that corner, that gave a connection with a line which Major Fountain and Major Purvis, of Helena, run, I think in 1902 or 1903, and by the notes which I had from that survey, I located exactly this corner here, which was the original southeast corner of Section 3 in 1816, which was two chains west of the true corner established by Mr. Griffin, which, at that time, was in the river and now on high and dry land. Having that corner here, and knowing the exact bound-ry line of the Mississippi River, according to the survey of 1816, I had no trouble whatever to trace the bound-ries of the survey of '16 of the Section line on the map. The other section lines here, I put in from the maps furnished by the Government of the survey of '33 of the Mississippi shore, which super-
130 seeded any map made in '16, according to the rules of the department.

Q. I will ask you, if you say you made that map, to describe that map to the jury and everything on it?

A. These lines which show here the center channel of the river, the inlet here and the outlet here, I procured from surveys——

Q. Let me call your attention to one thing: don't say "here," but say something that will appear in the record, as to what part of the map you refer to?

A. A channel which starts on the so-called east side of the island near Friars Point, right at the Mississippi River, and runs south to where the so-called Old River bed covered by deep water is now, and the channel that runs from the northwestern part of that body of water, which runs up north to the Mississippi River, I procured those from data furnished me by the United States River Commission, according to their actual survey of '79, and also by this east line here by data furnished on the map made by Major Fontaine and Mr. Purvis. The line here as probable Arkansas shore in '33 was put there according to the map of Township 29 North, Range 4 West; Township 28 N., Range 4 West; 29 North, Range 5 West, and 28 North, Range 5 West, as shown on their Government maps being about from 50 to 60 chains wide, and running parallel with the meandering shore line, where the metes and bounds were given by the United States Government of the survey of '33. There is no island shown in that survey, it is an absolute straight river.

Q. You speak there now of a meandering line of the Mississippi shore at that time?

A. Probable Mississippi River shore of 1833. Beginning at what is now the center of '31, which, in '33 wasn't in existence; the United States Government surveyors surveyed that eastern bound-ry of the Mississippi River, the eastern bound-ry of what is called on the map erroneously Mud Lake, and that meandering of the so-called Mud Lake quits right here at a little bayou, may be five chains east, about range line between Township 28 S., Range 4 West, and 29
131 North, Range 4 West, and from that time on, there is an absolute clear straight river shore all of the way up to the Mississippi River around Horseshoe Island, and nothing is mentioned of any island whatever. The field notes don't mention the island, or I mean a lake here and a narrow strip of land, and it is only the map that shows a little strip of land in here.

Q. What are you referring to?

A. That is Mud Lake, between Mud Lake and the Mississippi River, but nothing of that kind is shown in Township 29, Range 5 West, in which the land in controversy is located; a clear straight survey line of the Mississippi shore of the Mississippi River is surveyed.

Q. Is the land in controversy in 28 or 29?

A. 29, 5 West, I beg your pardon.

Q. Isn't it 28?

A. No. 28, 5 West is right.

Q. Go ahead, with the explanation?

A. The red line, which begins right above Friars point and follows right southwardly, first southwest, and then south, almost due south, near the center of Section 31, and then around the east line of the so-called Mud Lake, near the range line between the two town-

ships, and then for some distance on dry land then for a distance of about two miles there, or near the northern shore of the Old River, then a very short distance right close to the eastern shore of Old River, and from there on through Old River, and then a little bit on the east side of the present outlet, and then considerably west of the present outlook of the river, and from there on up, showing considerable cutting off of land here, shows the old meandering line of the Mississippi shore of the Mississippi River in 1833.

Q. From what date?

A. United States survey filed notes, not the map, the field notes, *not the map, the field notes*. I never go by map as a general rule unless there is a discrepancy, the field notes always govern, 132 and the maps are made from the field notes by men who have nothing to do with the survey whatever.

Q. Now proceed?

A. This line here on the west line of Mud Lake is the line of the river as shown on the map of the United States Government of the survey of '33, but there are no field notes on that line whatever.

Q. You mean the line of the west side?

A. The west side of Mud Lake and the east side of the river traverse. I have been all along this river here and came up, all up here.

Q. What river you speak of?

A. That is the old river bed from the range line west and north along Sections 12, 11, 10 and 3, and then along the channel, narrow channel up close to center of '35 where we quit surveying. From that place, I walked along that channel clear to the Mississippi River.

Q. What, if any, evidence of a channel did you find extending from that point to the river itself?

A. With the exception of a very little sand bar here through which a narrow channel runs through, which is, the last high water filled up, evidently filled up to some extent, because some of it very low right above that sand bar there out to the Mississippi River is a well defined channel about a chain to two chains wide with banks fifteen to twenty feet on either side.

Q. How close to the river does that channel extend?

A. Clear up to the mouth of the river.

Q. What season were you there, in November of this year?

A. November of this year.

Q. Was it dry?

A. Very dry river, as low as it has been for years.

Q. River at its lower stage?

A. Yes, sir, practically lower than it has been for many years.

Q. Water in that channel or not?

A. Considerable water.

Q. Where was the water?

133 A. Found water along here, and from here, and here on out.

Q. Say where you mean by "here"?

A. We found that along 26 and through about one-half of Section 25 above the sand bar.

Q. How about the channel that you have marked on the other side, the east side of the map going north?

A. There are two channels, one channel is on the west side of the old meandering line of '33 of the Mississippi shore, and one channel is about in the center of the river of '33 running in a southwardly direction going into what was in 16 land on the island, taken part of that land off, in other words, making here on the Mississippi shore a mile of land. This, I located as I stated from surveys made by Major Fontaine and Mr. Purvis, and also from data of the United States Mississippi River Commission.

Q. What, if anything, did you do with reference to following the channel that you have defined there on the map from the northeast end of Old River to the Mississippi River itself?

A. Well, I have made observation from about this point over;— I haven't gone any further, but then from about here.

Q. Where is that?

A. That is right north of the range line about a quarter of a mile.

Q. Where, if at all, does the Mississippi levee appear on the map?

A. The Mississippi levee appears on the range line in a west and northwesterly direction right close up to the border of the old river, as close as it safely can be built, until it strikes the center line of about say fractional 11 running east; and then from there it bears a little southwest, and then west, and then considerably southwest.

Q. How far is the levee from the bank of Old River?

A. I judge anywhere from fifty to a hundred yards, an average of 75 yards perhaps.

Q. Did you make or not any measurement of Old River?

A. Yes, sir, we made, measurements of Old River by triangulation.

134 Q. Did you make any measurements, or not, of the fields that appear upon that map?

A. I did not.

Q. Where did you get the data?

A. I got the data from Mr. Calhoun?

Q. Was he or not present when you made the map?

A. Yes, sir, in fact I finished it here last Sunday afternoon.

Q. When was the map prepared?

A. It was finished Sunday.

Q. You mean last Sunday?

A. Yes, sir.

Q. Where?

A. Right here in this town?

Q. Mr. Calhoun and you do that?

A. Yes, sir.

Q. Were you with him or not when he made any measurements of the depths of Old River?

A. I wasn't there, but I made some of them myself, I went out in a boat with a fisherman, and stayed out for about an hour.

Q. What part did you measure?

A. From about the center line of the west half of Section 11, from there on.

Q. What was the depth there at that point?

A. Well, we had a pole eight feet long, and we couldn't reach the bottom.

Q. There was no bottom depth?

A. No bottom, there was no drainage, from there on, we went up here and we found no place until we come about Dustin—of a little narrow opening in what they call Dustin pond, we found a depth there about five feet, and about ten feet on up here.

Q. At these places where you found no bottom, how far were they from the south shore?

A. From the south shore about a hundred yards.

Q. And how wide was Old River at this place?

A. Three hundred yards nearly.

135 Q. Now, where else, if any, did you make any further measurements?

A. We went over in a boat until we got to this outlet here and got stalled.

Q. What outlet do you speak of?

A. Of a so-called Dustin Pond we got in a mud bank, and had a hard time to get out, I wanted to go on, but soon found out I would risk my life if I got in here, for I would sink in mud about my neck.

Q. That was between Dustin Pond and Old River?

A. Yes, sir, right up here where the so-called Dustin Pond has some connection with the river.

Q. What connection has it with Old River at that point?

A. It looked to me somebody had gone in there and made an unnatural outlet; in other words, made a ditch so that they could go in with boats to get fish out there, and I found that to be a fact on examination.

Q. What was there, if anything, in the nature of a growth of any kind of small timber, or other timber in this connection between Old River and Dustin Pond?

A. In this Dustin Pond.

Q. In the connection between Dustin Pond and Old River?

A. Right below the connection of Dustin Pond, have a lot of old dead tall willows, I expect some of them 30 or 40 feet tall and right in the bottom, extending northeast, that is marked on the plat here from the so-called outlet are willows some of them as high as perhaps fifteen feet, and it looked like a marsh more than anything else to me.

Q. Do you mean extending clear across this connection point?

A. I didn't want to risk my life, my life was too precious to go through there, and the boatman wouldn't take me through for love or money.

Q. How far is it from the water, from Dustin Pond to Old River?

A. The water to Old River, the narrowest point, about 650 feet.

Q. How wide was that connection between the two, between Dustin Pond and Old River?

136 A. Right there about 600 feet?

Q. About that wide?

A. Wide, yes, sir.

Q. I am speaking of the distance between Dustin Pond and Old River?

A. That's about 600 feet, the nearest place right at the upper bank here.

Q. Now, there was some kind of a connection, you say, was there a slash or slough, or lake?

A. Looked like a ditch cut out, sir.

Q. How wide was it?

A. About ten feet looked like.

Q. What other connection was there?

A. I didn't see any except mud.

Q. Did it go through any timber or not?

A. I couldn't see any timber in Dustin Pond.

Q. There was a ditch cut through timber?

A. No, through willows.

Q. And these are the willows you have described as tall willows?

A. Yes, sir.

(Fitzgerald:) With the permission of the attorneys for the defendant, I would like to put Mr. Mashburn on the stand, just for one or two questions in re-buttal of what has been said, he wants to get off on the train.

(Montgomery:) We have no objection; but we want it strictly in re-buttal.

L. W. MASHBURN, a witness heretofore introduced, recalled by the plaintiff, testified further as follows:

Q. Mr. Mashburn, calling your attention again to the map which you had here yesterday, and taking this map in connection with the map filed here by the defendants, drawn by Mr. Schlierholz, what is the exhibit here, Exhibit 4, you will notice on your map as well as on the map Exhibit 4, there is a blue space, or small body of water called Dustin Pond, do you know that piece of water called Dustin Pond, do you know that piece of water?

137 A. I think I do.

Q. Have you been there and seen it yourself?

A. Yes sir.

Q. I will ask you, if you know, what, if any, physical connection there is between Pecan Lake as shown on your map and Dustin Pond?

A. Why, there is a connection.

Q. At the southwest end thereof, northwest end?

A. There is a connection there that I ran a skiff around without any apparent trouble at all, if we run aground, I don't recall it.

Q. Did you go through there in a boat?

A. I did.

Q. Now, is there any connection with Dustin Pond and Pecan Lake at the southeast end?

A. There was, yes sir.

Q. Was the water in it?

A. There was.

Q. Did you walk around that?

A. I did; that wasn't survey, however, by me, but I saw it.

Q. And walked around it?

A. Yes sir.

Cross-examination:

Q. Didn't exactly understand when you said the southwest end, the connection between Dustin Pond and that lake?

A. At this point?

Q. Yes?

A. Why, you say that we run the skiff around there, and I don't recollect we having any trouble whatever.

Q. You come from Dustin Pond into the lake through that passage there?

A. Why, we went from Pecan Lake or Old River, as indicated here.

Q. Into Dustin Pond?

A. Yes sir.

Q. What is the width of the water that you passed through
138 in the connection between the two?

A. Well, the connection, as I saw it was over a hundred feet wide there was no connection no place that you could call a narrow connection at all just spread out all into one.

Q. When was that Mr. Mashburn?

A. It was, as I recall it, in January of last year, I won't be positive of that though in January of this year, I won't be positive.

Q. Was the river out of its banks?

A. No sir.

Q. Was the river up over the sandbars?

A. No sir.

Q. In the low places?

A. No sir.

Q. Well, it was the rainy season of the year wasn't it?

A. Well, it was in January, sometimes it is the rainy season, and sometimes not.

Q. That particular January it had been raining very hard?

A. I don't recall it was specially rainy January, but of course wetter than it is now.

Q. Had been heavy rains from before Christmas up to that time?

A. I don't recall about that.

Q. As a matter of fact, there is usually heavy rains?

A. As a matter of fact, it is a wetter season than the present time is.

Q. They are not having been but very little up to this time, been a very dry Fall?

A. Well, I say it is a wetter season than the present season.

Q. But that is what is called a part of the wet season of the year?

A. It is, I think.

Mr. SCHLIERHOLZ, recalled, testified further as follows:

Q. Mr. Schlierholz, you know the deraignment of title to the lands of the Rust Land & Lumber Company in this territory involved in this suit?

139 A. I do, I am the custodian of all of the papers.

Q. I want to ask you what, from whom did they acquire their title from?

A. From Wm. A. Rust.

Plaintiff objects to that.

Court overrules the objection.

Plaintiff excepts.

Q. When did they purchase it from Wm. A. Rust?

A. It was purchased in September, the 20th, '95.

Q. By whom?

A. By Rust Land & Timber Co. after it had been organized, from Wm. A. Rust, who became the President of the Rust Land & Lumber Co.

Q. Who was he?

A. Lived at that time in the City of Boston?

Q. What connection did he have at the organization, or at the present?

A. He was the President and one of the principal stockholders.

Q. You have a deed from anybody to Wm. A. Rust?

A. Yes sir, from Lydia A. Stringer.

Q. Have a deed from Wm. A. Rust to the Rust Land & Lumber Co.?

A. That is a general deed, conveying several thousand acres lying in various counties in Arkansas.

Q. What do you know, if anything, as to who has paid the taxes on that land since '95?

A. The Rust Land & Timber Company.

Q. How do you know that?

A. From the tax receipts.

A. You mean the Rust Land & Lumber Company?

A. The Rust Land & Lumber Company has paid them.

Q. Have you tax receipts for those years?

A. Yes sir, except one year, which has been mislaid.

Q. You mean they—

A. I haven't prior to that time, I have them from '85 I think, with the exception of one year, which was lost.

(Montgomery:) I would like to introduce these in evidence
140 if counsel will give us permission to withdraw them and leave a copy of them in their place.

(Fitzgerald:) You can introduce them.

(Montgomery:) We introduce the tax receipts for '94 for the

taxes of the year '95, for the taxes of '94, February 6th, marked 5, 6, 7, 8, 9, 10—

Q. Who was Dan Fitzhugh?

A. He was our manager at that time. (In connection with Exhibit 10.)

(Fitzgerald:) We object to that tax receipt, issued in the name of Dan Fitzhugh.

Court overrules the objection.

Plaintiff excepts.

(Montgomery:) Also tax receipts marked Exhibits 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.

(Witness:) The total acreage for 1909—

Plaintiff objects to the attorney stating how much land is in the tax receipt from each tax receipt.

Q. Then, I will ask the witness to figure the acreage in that tax receipt for the year 1909?

A. 1,430.09.

Q. What is the total acreage in the tax receipt for the year 1908?

A. 1,450.09.

Q. What is the total acreage shown in the tax receipt for the year 1907?

A. 164.52.

Q. What is the total acreage shown in the tax receipt for the year 1906?

A. 1464.55.

Q. What is for the year 1905?

A. 1274.52.

141 Q. What is for the year 1904?

A. 1264.52.

Q. What for the year 1903?

A. 1265.52.

Q. What for the year 1902?

(Fitzgerald:) That is just taking up the time, tax receipts speak for themselves, and don't include the land in controversy.

(The Court:) I will only permit questions as to the lands in controversy.

The said tax receipts introduced, marked exhibits 5 to 22 inclusive, are in words and figures following.

142 R. C. Burke, Sheriff and Collector.
F. F. Kitchens, Deputy.

Tax Receipt—1894.

Tax books are open for collection of taxes from Jan. 1st to April 10th of each year.

STATE OF ARKANSAS,
County of Philips:

HELENA, ARK., Feb. 6/1895.

Received of Rust Land Company by Dan Fitzhugh, Thirty and 25/100 Dollars for taxes due on the following described Real Estate in Philips County, Arkansas for the year 1894.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. —.....	2	4 S.	4 E.	10.15	10
Frl. S.W. —.....	2	"	"	25.95	25
S. pt. Frl. N.W. —.....	2	"	"	45.53	45
All	3	"	"	431.78	950
Frl. S. 1/2.....	10	"	"	158.06	160
All Frl	14	"	"	148.29	150
All	15	"	"	375.90	375
All	22	"	"	56.53	55
All	23	"	"	12.33	15
					<hr/> 1785

State Tax.

	Dollars. Cents.
Common School Tax.....	3.57
Sinking Fund Tax.....	.89
Pension Fund Tax.....	.45
State Gen-ral Tax.....	4.02

County Tax.

County Interest.....	3.57
General County.....	8.92
District School Fund.....	8.93
District Levee Fund.....	....

City Tax.

City General.....
City Judgment.....	....
City Contingent.....	....

Total Taxes.....\$30.35

NOTICE.—The Holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

R. C. BURKE,
Sheriff and Collector,
 By F. F. KITCHENS, D. S.

Frl. N. W. Sec. 3 In name of J. T. Jefferson.
 Copy. Ex. 5. YEH.

143 R. C. Burke, Sheriff and Collector.
 F. F. Kitchens, Deputy.

Tax Receipt—1895.

NOTICE.—The Tax books are open for the collection for taxes from Jan. 1st to April 10th of each year. After April 10th, 25% Penalty and costs added.

STATE OF ARKANSAS,
County of Phillips:

HELENA, ARK., 4/30/1896.

Received of Rust Land. Co. (White), Fifty Three and 63/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1895:

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. $\frac{1}{4}$	2	4 S.	4 E.	10.15	10
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	25
S. pt. Frl. N.W. $\frac{1}{4}$	2	"	"	45.53	45
N.E. $\frac{1}{4}$	3	"	"	160.00	160
Frl. S.E. $\frac{1}{4}$	3	"	"	159.75	160
Frl. S.W. $\frac{1}{4}$	3	"	"	28.42	30
Frl. N.W. $\frac{1}{4}$	3	"	"	83.61	600
Frl. S. $\frac{1}{2}$	10	"	"	158.06	160
Frl. All	14	"	"	148.29	150
Frl. N.E. $\frac{1}{4}$	15	"	"	159.40	160
S.E. $\frac{1}{4}$	15	"	"	160.00	160
Frl. W. $\frac{1}{2}$	15	"	"	56.50	55
Frl. All	22	"	"	56.53	55
Frl. All	23	"	"	12.33	15
					<hr/> 1785

State Tax.

	Dollars.	Cents.
Common School Tax	3.	57
Pension Fund Tax .....		.45
State General Tax	4.	02

County Tax.

County Interest	3.57
County General	8.93
District School Fund.....	8.92
District Levee Fund.....	....

City Tax.

City General .....	....
City Judgment .....	....
City Contingent .....	....
	<hr/>
	29.46

25% Penalty	7.37
Cost	16.80
	<hr/>

Total Taxes 53.63

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers, and if any error exists, to return same at once for correction.

R. C. BURKE,

Sheriff & Col.,

By F. F. KITCHENS, *Deputy.*

Copy. Ex. 6. YEH.

144 R. C. Burke, Sheriff and Collector.
F. F. Kitchens, Deputy.

Tax Receipt—1896.

NOTICE.—The Tax Books are open for the collection of taxes from Jan. 1st to April 10th of each year. After April 10th, 25% penalty and costs added.

STATE OF ARKANSAS,
County of Phillips:

HELENA, ARK., April 3d, 1897.

Received of W. A. Rust, (White) Twenty nine and 46/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1896.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. $\frac{1}{4}$	2	4 S.	4 E.	10.15	10
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	25
S. pt. Frl. N.W. $\frac{1}{4}$	2	"	"	45.53	45
N.E. $\frac{1}{4}$	3	"	"	160.00	160
Frl. S.E. $\frac{1}{4}$	3	"	"	159.75	160
Frl. S.W. $\frac{1}{4}$	3	"	"	28.42	30
Frl. N.W. $\frac{1}{4}$	3	"	"	83.61	600
Frl. S. $\frac{1}{2}$	10	"	"	158.06	160
Frl. All.....	14	"	"	148.29	150
Frl. All.....	15	"	"	375.90	375
Frl. All.....	22	"	"	56.53	55
Frl. All.....	23	"	"	12.33	15
					<hr/> 1785

State Tax.

	Dollars.	Cents.
Common School Tax.....	3.	57
Pension Fund Tax.....		.45
State General Tax.....	4.	02

County Tax.

County Interest.....	3.57
County General.....	8.93
District School Fund.....	8.92
District Levee Fund.....	....

City Tax.

City General.....	....
City Judgment.....	....
City Contingent.....	....
25 Per cent Penalty.....	....
Cost .....	....

Total Taxes.....\$29.46

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

R. C. BURKE,
Sheriff and Collector,
 By KITCHENS, *Deputy.*

Copy. Ex. 7, YEH.

145 R. C. Burke, Sheriff and Collector.
F. Kitchens, Deputy.

Tax Receipt—1897.

Tax Books are open for Collection of Taxes from January 1st to April 10th of each year.

STATE OF ARKANSAS,
County of Phillips:

HELENA, ARK., 3/4/1898.

Received from Rust Land & Lbr. Co. Twenty nine and 8/100 Dollars for Taxes due on the following described real estate in Phillips County, Arkansas, for the year 1897.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. $\frac{1}{4}$	2	4 S.	4 E.	10.15	10
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	25
S. pt. Frl. N.W. $\frac{1}{4}$	2	"	"	45.53	45
All Frl.....	3	"	"	431.78	950
S. $\frac{1}{2}$ Frl.....	10	"	"	158.06	160
All Frl.....	14	"	"	148.29	150
All Frl.....	15	"	"	375.90	370
All Frl.....	22	"	"	656.53	55
All Frl.....	23	"	"	12.33	15
					<hr/> 1780

State Tax.

	Dollars.	Cents.
Common School Tax.....	3.	56
School Interest Tax.....		44
Pension Fund Tax.....		45
State General Tax.....	4.	00

County Tax.

County Interest	3.56
County General	8.90
District School Fund.....	8.90
District Levee Fund.....	....

City Tax.

City General .....	....
City Judgment .....	....
City Contingent .....	....

Total Taxes..... \$29.81

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return same at once for correction.

R. C. BURKE,
Sheriff and Collector.
 By KITCHENS, *Deputy.*

Copy. Ex. 8. YEH.

146 R. C. Burke, Sheriff and Collector,
 F. F. Kitchens, Deputy.

Tax Receipt—1898.

Tax Books are open for Collection of Taxes from January 1st to April 10th of each year.

STATE OF ARKANSAS,
County of Phillips:

HELENA, ARK., 1-23-1899.

Received of Rust Land & Lumber Co. by Dan Fitzhugh (White) Twenty-nine and 83/100 Dollars For Taxes on the following described real estate in Phillips County, Arkansas, for the year 1898.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. ¼.....	2	4 S.	4 E.	10.15	10
Frl. S.W. ¼.....	2	"	"	25.95	25
S. pt. Frl. N.W. ¼.....	2	"	"	45.53	45
All Frl.	3	"	"	431.78	950
Frl. S. ½.....	10	"	"	158.03	160
Frl. All.....	14	"	"	148.29	150
Frl. All.....	15	"	"	375.90	370
Frl. All.....	22	"	"	53.00	55
Frl. All.....	23	"	"	12.33	15
					<hr/> 1780

State Tax.

	Dollars.	Cents.
Common School Tax.....	3.	56
School Interest Tax.....		.45
Pension Fund Tax.....		.45
State General Tax.....	4.	01

County Tax.

County Interest	3.56
County General	8.90
District School Fund.....	8.90
District Levee Fund.....	....

City Tax.

City General .....	....
City Judgment .....	....
City Contingent .....	....
Total Taxes.....	\$29.83

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return same at once for correction.

R. C. BURKE,
Sheriff and Collector.
 By KITCHENS, *Deputy.*

Copy. Ex. 9. YEH.

147 R. C. Burke, Sheriff and Collector.
 F. F. Kitchens, Deputy.

Tax Receipt for 1899.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARK., 4 6-1900.

STATE OF ARKANSAS,
County of Phillips:

Received of Dan'l Fitzhugh (White), Fifty-three and 98/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1899.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. $\frac{1}{4}$	2	4 S.	4 E.	10.15	20
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	50
S. pt. Frl. N.W. $\frac{1}{4}$	2	"	"	45.53	100
All Frl.....	3	"	"	431.78	1290
Frl. S. $\frac{1}{2}$	10	"	"	158.06	320
Frl. All.....	14	"	"	148.29	300
Frl. All.....	15	"	"	375.90	750
Frl. All.....	22	"	"	53.00	110
Frl. All.....	23	"	"	12.33	25
					2965

State Tax.

	Dollars.	Cents.
Common School Tax.....	5.	93
School Interest Tax.....	2.	97
Pension Fund Tax.....	.	74
State General Tax.....	8.	67

County Tax.

County Interest.....	5.93
County General.....	14.83
District School Fund.....	14.82

City Tax.

City General.....	.....
City Judgment.....	.....
Contingent Fund .....	.....

Total Taxes.....\$53.89

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

R. C. BURKE,
Sheriff and Collector.

By ———, *Deputy.*

Copy. Ex. 10. YEH.

148 F. F. Kitchens, Sheriff and Collector.
W. B. Dalzell, Deputy.

Tax Receipt for 1900.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARK., 4-8-1901.

STATE OF ARKANSAS,
County of Phillips:

Received of Rust Land & Lumber Co. (White) Fifty-one and 92/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1900.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. ¼.....	2	4 S.	4 E.	10.15	20
Frl. S.W. ¼.....	2	"	"	25.95	50
S. pt. Frl. N.W. ¼.....	2	"	"	45.53	100
All Frl.....	3	"	"	431.78	1290
Frl. S. ½.....	10	"	"	158.06	320
Frl. All.....	14	"	"	148.29	300
Frl. All.....	15	"	"	375.90	750
Frl. All.....	22	"	"	56.53	110
Frl. All.....	23	"	"	12.33	25
					<hr/>
					2965

State Tax.

	Dollars. Cents.
Common School Tax.....	5.93
School Interest Tax.....	2.97
Pension Fund Tax.....	.75
State General Tax.....	6.68

County Tax.

County Interest.....	5.93
County General.....	14.83
District School Fund.....	14.83
District Levee Fund.....	....

City Tax.

City General.....	....
City Judgment.....	....
City Contingent.....	....

Total Taxes.....\$51.92

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

F. F. KITCHENS,
Sheriff & Collector,
 ———, *Deputy.*

Copy. Ex. 11. YEH.

149 F. F. Kitchens, Sheriff & Collector.
 W. B. Dalzell, Deputy.

Tax Receipt for 1902.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARK., 4-10-1903.

STATE OF ARKANSAS,
County of Phillips:

Received of Rust Land & Lumber Co. (White) Fifty-two and 64/100 Dollars for taxes on the following described real estate in Phillips County, Arkansas, for the year 1902.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. ¼.....	2	4 S.	4 E.	10.15	20
Frl. S.W. ¼.....	2	"	"	25.95	50
S. pt. Frl. N.W. ¼.....	2	"	"	45.53	100
All	3	"	"	431.78	1290
Frl. S. ½.....	10	"	"	158.06	320
Frl. All.....	14	"	"	148.29	300
Frl. All.....	15	"	"	375.90	750
Frl. All.....	22	"	"	56.53	110
Frl. All.....	23	"	"	12.33	25
					<hr/> 2965

State Tax.

	Dollars	Cents.
Common School Tax 2.....	5.	93
Fund 1-2.....	1.	48
Sinking Fund 1-4.....		74
Pension 3-4.....	2.	23
State General Tax 2-1-4.....	6.	67

County Tax.

County Interest 2.....	5.93
County General 5.....	14.83
District School Fund.....	14.83
District Levee Fund.....	....
Rode Tax 3.....	....

City Tax.

City General 5.....	....
City Judgment 5.....	....
City Contingent 2.....	....

Total

25%
Cost

Total taxes.....\$52.64

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

F. F. KITCHENS,
Sheriff & Collector,
— — —, Deputy.

Copy. Ex. 12. YEH.

150 F. F. Kitchens, Sheriff & Collector.
W. B. Dalzell, Deputy.

Tax Receipt for 1903.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARK., April 1st, 1904.

STATE OF ARKANSAS,
County of Phillips:

Received of Dan Fitzhugh (White) Ninety four and 87/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1903.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. 1/4.....	2	4 S.	4 E.	10.15	25
Frl. S.W. 1/4.....	2	"	"	25.95	105
S. pt. Frl. N.W. 1/4.....	2	"	"	45.53	220
All Frl.....	3	"	"	432.78	1995
Frl. S. 1/2.....	10	"	"	158.06	630
Frl. All.....	14	"	"	148.29	590
Frl. All.....	15	"	"	375.90	1505
Frl. All.....	22	"	"	56.53	225
Frl. All.....	23	"	"	12.33	50
					<hr/> 5345

State Tax.

	Dollars.	Cents.
Common School Tax 2.....	10.	69
Capital Fund 1-2.....	2.	67
Sinking Fund 1-4.....	1.	34
Pension 3-4.....	4.	01
State General Tax 2-1-4.....	12.	02

County Tax.

County Interest 2.....	10.	69
County General 5.....	26.	73
District School Fund.....	26.	72
District Levee Fund 5.....		

City Tax.

City General 5.....		
City Judgment 5.....		
City Contingent 2.....		

Total

25 Per Cent.....
Cost

Total Taxes.....\$94.87

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

F. F. KITCHENS,
Sheriff & Collector,
— — —, Deputy.

Copy. Ex. 13. YEH.

151 F. F. Kitchens, Sheriff & Collector.
W. B. Dalzell, Deputy.

Tax Receipt for 1904.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARK., 4-6-1905.

STATE OF ARKANSAS,
County of Phillips:

Received of Dan Fitzhugh (White) One Hundred and Ten & 91/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1904.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. ¼.....	2	4 S.	4 E.	10.15	25
Frl. S.W. ¼.....	2	"	"	25.95	105
S. pt. Frl. N.W. ¼.....	2	"	"	45.53	220
All Frl.....	3	"	"	431.78	1995
Frl. S. ½.....	10	"	"	158.06	630
Frl. All.....	14	"	"	148.29	590
Frl. All.....	15	"	"	375.90	1505
Frl. All.....	22	"	"	56.53	225
Frl. All.....	23	"	"	12.33	50
					<hr/> 5345

State Tax.

	Dollars.	Cents.
Common School Tax 2.....	10.69	
Fund 1-2.....	2.67	
Sinking Fund 1-4.....	1.34	
Pension 3-4.....	4.01	
State General Tax 2-1-4.....	12.02	

County Tax.

County Interest 2.....	10.69
County General 5.....	26.73
District School Fund.....	26.72
District Levee Fund 5.....	.....
Road Tax 3.....	16.04

City Tax.

City General 5.....	.....
City Judgment 5.....	.....
City Contingent 2.....	.....

Total

25 Per Cent.....	.....
Cost .....	.....

Total Taxes.....\$110.91

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

F. F. KITCHENS,
Sheriff & Collector,
SANDERS, *Deputy.*

Copy. Ex. 14. YEH.

152 F. F. Kitchens, Sheriff & Collector.
Amos Jarman, Deputy.

Tax Receipt for 1905.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

STATE OF ARKANSAS,
County of Phillips:

HELENA, ARK., 3-27-1906.

Received of Dan'l Fitzhugh (White), One Hundred and Nine & 61/100 Dollars, for Taxes due on the following described real estate in Phillips County, Arkansas, for the year 1905.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. ¼.....	2	4 S.	4 E.	10.15	25
Frl. S.W. ¼.....	2	"	"	25.95	105
S. pt. Frl. N.W. ¼.....	2	"	"	45.53	220
All Frl.	3	"	"	431.78	1995
Frl. S. ½.....	10	"	"	158.06	630
Frl. All	14	"	"	148.29	590
All Frl.	15	"	"	385.90	1505
All Frl	22	"	"	56.53	225
All Frl.	23	"	"	12.33	50
					<hr/> 5345

State Tax.

	Dollars. Cents.
Common School Tax.....	10.69
Pension 1	5.35
Capital 1-2	2.68
Sinking Fund 1-4.....	1.34
State General Tax 1-3-4.....	9.37

County Tax.

County Interest 2.....	10.69
County General 5.....	26.72
District School Fund.....	26.73
Levee Fund 5.....	16.04
Road Tax 3.....

City Tax.

City General 5.....
City Judgment 5.....
City Contingent 2.....

Total	\$109.61
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25 Per Cent Cost.....
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Total Taxes.....
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NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

F. F. KITCHENS,
Sheriff & Collector.
 AMOS JARMAN,
Deputy.

Copy. Ex. 15. YEH.

153 F. F. Kitchens, Sheriff & Collector.
Amos Jarman, Deputy.

Tax Receipt for 1906.

Tax Books are open for collection of taxes from January 1st to April 10th, of each year.

STATE OF ARKANSAS,
County of Phillips:

HELENA, ARK., 4-10-1907.

Received of W. A. Rust (White), One Hundred and Nine & 61/100 Dollars, for Taxes due on the following described real estate in Phillips County, Arkansas, for the year 1907.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. $\frac{1}{4}$	2	4 S.	4 E.	10.15	25
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	105
S. pt. Frl. N.W. $\frac{1}{4}$	2	"	"	45.53	220
All Frl.	3	"	"	431.78	1995
Frl. S. $\frac{1}{2}$	10	"	"	158.06	630
All Frl.	14	"	"	148.29	590
All Frl.	15	"	"	375.90	1505
All Frl.	22	"	"	56.53	225
All Frl.	23	"	"	12.33	50
					<hr/> 5345

State Tax.

	Dollars. Cents.
Common School Tax 2.....	10.69
Pension 1	5.35
Capital 1-2	2.68
Sinking 1-4	1.34
State General Tax 1-3-4.....	9.73

County Tax.

County Interest 2.....	10.69
County General 5.....	36.72
District School Fund.....	26.73
Levee Fund 5.....	.....
Road Tax 3.....	16.04

City Tax.

City General 5.....
City Judgment 5.....
City Contingent 2.....

Total	<hr/>
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25 per cent.....
Cost
Total Taxes.....	\$109.61

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

F. F. KITCHENS,
Sheriff & Collector.
 JARMAN, *Deputy.*

Copy. Ex. 16. YEH.

154 F. F. Kitchens, Sheriff and Collector.
 I. M. Cartwright, Deputy.

Tax Receipt for 1907.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

STATE OF ARKANSAS,
County of Phillips:

HELENA, ARK., 6-6-1908.

Received of Rust Land & Lbr. Co. (White), One Hundred and Sixty-two and 14/100 Dollars, for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1907.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. $\frac{1}{4}$	2	4 S.	4 E.	10.15	25
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	105
S. pt. Frl. N.W. $\frac{1}{4}$	2	"	"	45.53	220
N.E. $\frac{1}{4}$	3	"	"	160.00	640
Frl. S.E. $\frac{1}{4}$	3	"	"	159.75	640
Frl. S.W. $\frac{1}{4}$	3	"	"	28.42	115
Frl. N.W. $\frac{1}{4}$	3	"	"	83.61	600
Frl. S. $\frac{1}{2}$	10	"	"	158.06	630
All Frl.	14	"	"	148.29	590
Frl. N.E. $\frac{1}{4}$	15	"	"	159.40	640
S.E. $\frac{1}{4}$	15	"	"	160.00	640
Frl. W. $\frac{1}{2}$	15	"	"	56.50	225
All Frl.	22	"	"	56.53	225
All Frl.	23	"	"	12.33	50
					5345

State Tax.		Dollars. Cents.
Common School Tax 3.....		16.04
Pension 1-2		8.02
Capital 1-2		2.67
State General Tax 1-3-4.....		9.36

County Tax.		
County Interest 2.....		10.69
County General 5.....		26.73
District School Fund.....		26.72
Cotton Belt Levee 5.....		.....
Laconia Levee 10.....		.....
Road Tax 3.....		16.04
Town of Marvell 5.....		.....

City Tax.		
City General 5.....		.....
City Judgment 5.....		.....
City Contingent 2.....		.....
Total		\$116.27
25 Per Cent.....		29.07
Cost		16.80
Total Taxes.....		\$162.14

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at once for correction.

F. F. KITCHENS,
Sheriff & Collector.
 C. P. SANDERS, *Deputy.*

Copy. Ex. 17. YEH.

155 F. F. Kitchens, Sheriff and Collector.

Tax Receipt for 1908.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

STATE OF ARKANSAS,
County of Phillips:

HELENA, ARKANSAS, April 2d, 1909.

Received of Rust Land & Lumber Co. (White), One Hundred Twenty-one and 63/100 Dollars, for Taxes due on the following described real estate in Phillips County, Arkansas, for the year 1908.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. $\frac{1}{4}$	2	4 S.	4 E.	10.15	25
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	105
S. pt. Frl. N.W. $\frac{1}{4}$	2	"	"	45.53	220
All Frl.	3	"	"	143.78	1995
All Frl.	10	"	"	323.63	830
All Frl.	14	"	"	148.29	590
All Frl.	15	"	"	375.90	1505
All Frl.	22	"	"	56.53	225
All Frl.	23	"	"	12.33	50
					<hr/> 5545

State Tax.

	Dollars. Cents.
Common School Tax 3.....	16.64
Pension 1-1-2	8.32
Capital 1-2	2.78
State General Tax 1-3-4.....	10.70

County Tax.

County Interest 2.....	11.09
County General 5.....	27.73
District School Fund.....	27.73
Cotton Belt Levee 5.....	.....
Laconia Levee 5.....	.....
Road Tax 3.....	16.64

City Tax.

City General 5.....	.....
City Judgment 5.....	.....
City Contingent 2.....	.....

Total	\$121.63
25 Per Cent.....	.....
Cost .....	.....

NOTICE.—The holder of this receipt is hereby notified to compare with his title papers without delay, and if any error exists, to return the same for correction.

F. F. KITCHENS,
Sheriff & Collector.
 ———, *Deputy.*

Copy. Ex. 18. YEH.

156 F. F. Kitchens, Sheriff & Collector.

Tax Receipt for 1909.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARKANSAS, 3-25-1910.

STATE OF ARKANSAS,
County of Phillips:

Received of Rust Land & Lumber Co. (White) One Hundred and Twelve and 90/100 Dollars. For Taxes due on the following described real estate in Phillips County, Arkansas, for the year 1909.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
Frl. N.E. $\frac{1}{4}$	2	4 S.	4 E.	10.15	35
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	125
S. pt. Frl. N.W. $\frac{1}{4}$	2	"	"	45.53	225
Frl. All	3	"	"	431.78	1995
Frl. All	10	"	"	323.63	880
Frl. All	14	"	"	148.29	600
Frl. N.E. $\frac{1}{4}$	15	"	"	159.40	640
S.E. $\frac{1}{4}$	15	"	"	160.00	640
Frl. W. $\frac{1}{2}$	15	"	"	56.50	300
Frl. All	22	"	"	56.53	225
Frl. All	23	"	"	12.33	50
					<hr/> 5715

State Tax.

Dollars. Cents.

Common School Tax 3	17.15
Pension $1\frac{1}{2}$	8.58
Capital $\frac{1}{2}$	2.86
State General Tax $1\frac{3}{4}$	10.00

County Tax.

County General 5	28.58
District School Fund 5 and 7	28.58
Cotton Belt Levee 5 .....	.....
Laconia Levee 10 .....	.....
Road Tax 3	17.15
Town of Marville 3 .....	.....

City Tax.

City General 5.....	.....
City Judgment 5.....	.....
25 Per Cent. ....	.....
Cost .....	.....
Total	\$112.90

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return the same at office for correction.

F. F. KITCHENS,
Sheriff and Collector,
 C. P. SANDERS, *Deputy.*

Copy. Ex. 19. YEH.

157 Amos Jarmon, Sheriff and Collector.

Tax Receipt for 1910.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARKANSAS, March 13, 1911.

STATE OF ARKANSAS,
County of Phillips:

Received of Rust Land & Lumber Co. (White) One Hundred Twelve and 18/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1910.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
S. pt. Frl. N.W. ¼.....	2	4 S.	4 E.	45.53	225
Frl. S.W. ¼.....	2	"	"	25.95	125
N.E. ¼.....	3	"	"	160.00	640
Frl. S.E. ¼.....	3	"	"	159.75	640
Frl. N.W. ¼.....	3	"	"	83.61	600
Frl. S.W. ¼.....	3	"	"	28.42	115
Frl. N. ½.....	10	"	"	165.57	250
Frl. S. ½.....	10	"	"	158.08	630
All Frl.	14	"	"	148.29	600
Frl. N.E. ¼.....	15	"	"	159.41	640
S.E. ¼.....	15	"	"	160.00	640
Frl. W. ½.....	15	"	"	56.50	300
Frl. All.....	22	"	"	56.53	225
All Frl.	23	"	"	12.33	50

5680

State Tax.

	Dollars. Cents.
Common School Tax 3.....	17.04
Pension 1½	8.52
Capital 1½	2.84
State General Tax 1¼	9.94

County Tax.

County General 5	28.40
District School Fund	28.40
Cotton Belt Levee 5.....	
Laconia Levee 20	
Road Tax 3	17.04

City Tax.

City General 5.....	
City Judgment 3.....	
25 Per Cent.	
Cost	
Total	\$112.18

NOTICE.—Please return this receipt with remittance. The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return same at once for correction.

AMOS JARMON,
Sheriff & Collector,
 E. P. MALSTER, *Deputy.*

Copy. Ex. 20. YEH.

158 Amos Jarmon, Sgeriff and Collector.

Tax Receipt for 1911.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARKANSAS, Jan'y 23, 1912.

STATE OF ARKANSAS,
County of Phillips:

Received of Rust Land & Lumber Co. (White) One Hundred Seven and 21/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1911.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
S. Pt. Frl. N.W. $\frac{1}{4}$	2	4 S.	4 E.	45.53	225
Frl. S.W. $\frac{1}{4}$	2	"	"	25.95	125
Frl. All	3	"	"	431.78	1995
Frl. All	10	"	"	323.63	880
All Frl.	14	"	"	148.29	600
All Frl.	15	"	"	375.90	1580
All Frl.	22	"	"	56.33	225
All Frl.	23	"	"	12.07	50
					<hr/> 5680

State Tax.

	Dollars.	Cents.
Common School Tax 3.....	17.	04
Pension $1\frac{1}{2}$	8.	52
Capital $\frac{1}{2}$	2.	84
State General Tax $1\frac{3}{4}$	9.	94
State Sinking Fund $\frac{1}{8}$		71

County Tax.

County General 4.....	22.72
District School Fund	28.40
Cotton Belt Levee 5.....	....
Laconia Levee 20 .....	....
Road Tax 3	17.04

City Tax.

City General 5.....	....
City Judgment 3.....	....
25 Per Cent. ....	....
Cost .....	....

Total Taxes\$107.21

NOTICE.—Please return this receipt with remittance. The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return same at once for correction.

AMOS JARMON,
Sheriff and Collector,
 J. R. DALZELL, *Deputy.*

Copy. Ex. 21. YEH,

159 Amos Jarmon, Sheriff and Collector.
J. R. Dalzell, Deputy.

Tax Receipt for 1912.

Tax Books are open for collection of taxes from January 1st to April 10th of each year.

HELENA, ARKANSAS, 3-27-1913.

STATE OF ARKANSAS,

County of Phillips:

Received of Rust Land & Lumber Co. (White) One Hundred and Twelve & 89/100 Dollars for taxes due on the following described real estate in Phillips County, Arkansas, for the year 1912.

Description.	Sec.	Twp.	Range.	No. of acres.	Valuation as equalized.
S. Pt. Frl. N.W. ¼.....	2	4 S.	4 E.	45.53	225
Frl. S.W. ¼	2	4	4	25.95	125
All Frl.	3	4	4	431.78	1995
All Frl.	10	4	4	323.63	880
All Frl.	14	4	4	148.29	600
All Frl.	15	4	4	375.90	1580
All Frl.	22	4	4	56.33	225
All Frl.	23	4	4	12.07	50
					<hr/> 5680

State Tax.

	Dollars. Cents.
Common School Tax 3.....	17.04
Pension 1½	8.52
Capital	2.84
General State Tax 1¾	9.94
State Sink. Fund ⅛.....	.77

County Tax.

County General 5	28.40
District School Fund	28.40
Cotton Belt Levee 5.....	....
Laconia Levee 20 .....	....
Road Tax 3	17.04
Marvell 3 .....	....

City Tax.

City General 5.....
25 Per Cent. ....	....
Cost .....	....

Total\$112.89

NOTICE.—Please return this receipt with remittance. The holder of this receipt is hereby notified to compare same with his title papers without delay, and if any error exists, to return same at once for correction.

AMOS JARMON,
Sheriff and Collector,
M., *Deputy.*

Copy. Ex. 22. YEH.

160 Q. What acts of possession to your knowledge, your personal knowledge, has the Rust Land & Lumber Co. exercised over the land where this timber was cut and the other lands north of Old River since you have known, of being connected with the company?

A. I can only tell for the last four years, during that time, they have exercised full control over the entire island up to the north bank of the Old River, I have never heard, nor have we been notified of any claim on it of any land.

Q. What time you say, you have been connected with this company?

A. I have been connected ten years on the 7th day of February of next year.

Q. And during that time what, if any, claim of adverse ownership have you been advised of?

A. Never.

Plaintiff objects to that.

Court overrules objection.

Plaintiff excepts.

(Fitzgerald:) We object to the other question, the question was what acts of ownership had this company exercised, he answered by saying they claimed it, but he said in his testimony that he had never been on this land until the 8th of November, so how could he know.

(Witness:) I answered that there never had been any claim made to my knowledge.

Q. When was the first knowledge that you, or notice that you had of any adverse claim by any body to that land or timber north of Old River?

A. Last January when the last trespass was committed and we were notified.

Q. What adverse claim do you know of by King and Anderson, or these other persons who claimed to own lands on the main shore bank, ever made you any demand?

A. This was the very first time we ever heard of any person claiming any land north of Old River and east of Old River.

161 Q. You were not down there when the writ was levied were you?

A. No sir, I was in Memphis a short time after that.

Q. And you were not there when this timber was being rafted into Old River?

A. No sir, that was in the hands of Mr. De Shau.

Q. That wasn't in your department?

A. No sir.

Q. What inspection did you make of the timber at any time on these accretions?

A. Not very much of an inspection, I didn't go any more than about six chains inside of where they were going east and west, and ten chains, nine chains north and south.

Q. What examination did you make of the timber northeast of that, up to the main body of the—

A. For about thirty chains, I went up north and northwest, and I found some good size trees there, cottonwood.

Q. How was that timber going northeast from this place where the timber was cut, whether it continued to increase in size, or diminish in size?

A. No, it increased somewhat, very slightly, might have been a few inches apparently.

Q. And as you go northeast from the Old River?

A. It was northwest I went.

Q. I am speaking going northwest from the Old River?

A. Yes sir, it increased.

Q. Up towards the main river, you say it increased in size?

A. It increased in size somewhat.

Q. Were the trees larger or smaller up there about the pecan orchard, or the plum orchard as it is called?

A. I didn't go over there.

Q. How was the timber up at the eastern end of Dustin Pond?

A. East of Dustin Pond, old dead willows very tall for a very short distance right below that was very old timber, I should judge, near as I can tell from my knowledge of cottonwood, it must have been about sixty years old.

162 & 163 Q. Is there, or not, a way to tell the age of a tree by the rings in the tree?

A. Yes sir, if you cut it down you can tell it.

Q. Did you make any such examination as that?

A. No, but I knew from the size cottonwood timber, and having had a good deal personally with cottonwood timber in the Mississippi River bottoms, in Illinois for many years, I judge that timber must have been from fifty-five to sixty years old.

Q. You spoke of examining a map of the Government survey of 1815 and 1816, and traverse of the Arkansas bank of the river at that time, have you a certified copy of that map with you?

A. Yes sir, it is lying right on that map there.

Q. Is that it or not?

A. Yes sir, this is the one.

(Montgomery:) We will offer this in evidence as an exhibit to this witnesses testimony.

The same is by the stenographer marked exhibit 23, which said exhibit is in words and figures following, to wit:

164-167 Q. Where did you obtain that?

A. From the general land office in Washington, D. C. custodian of all of the Government surveys.

Q. You have also a certified copy of the map of the Government survey of the Mississippi shore of '33, like the one that has been introduced?

A. Exactly the same copy, also certificate, they are all made from the same plate.

Q. Have you a certified copy or not of the Government survey in the State of Mississippi of '33 in Township 28, Range 4?

A. Yes sir, the survey was finished in '35.

Q. What is this paper that I hand you?

A. That is 29, 4, West.

Q. Certified copy of the Government survey of '33?

A. Yes sir.

Q. '32?

A. Yes sir.

(Montgomery:) I will introduce that. Also two others. The said exhibit was by the stenographer marked exhibit 24, 25 and 26, the same being in words and figures following, to-wit:

168 Q. Have you ever seen the plat of the survey of the Mississippi River made under the directions of the Mississippi River Commission, chart number 28 and promulgated by the Commission?

A. Yes sir repeatedly.

Q. In '79, what is the paper that I had you, Mr. Schliehholz?

A. Charts number- 28 and 29 of the Mississippi River Commission, the Survey of 1879 and 1880.

Q. How, do you know that paper is that chart?

A. I have procured it from the Secretary of the Mississippi River Commission in St. Louis, Missouri.

Q. Is that or not a chart promulgated and published by the Mississippi River Commission?

A. It is, by the United States Government, the official map.

(Fitzgerald:) We object to that for the following reasons:

1. Because it appears that someone has pasted together different charts.

Q. You pasted them together yourself?

A. I pasted those together, and there is nothing taken off.

1. Because it appears that one of the attorneys for the Rust Land & Lumber Company has prepared and pasted together two charts proposing to be, or purporting to be charts of the Mississippi River Commission in '79 and '80.

2. Because the same are not certified to and are not purported to be correct maps, and

3. Because the survey is of the condition of the Mississippi River in '79 and '80, when this suit, is not the condition of the Mississippi

River in '79 and '80, but the Mississippi River in '48 when Horse-shoe cut-off occurred.

(Montgomery:) We offer that as a public document, promulgated by the Mississippi River Commission.

(The Court:) I sustain the objection.

Defendant excepts.

169 & 170 The said exhibit last mentioned was by the stenographer marked No. 27, and is in words and figures following:

171 Q. Mr. Schlierholz in your examination of that land around where the timber was cut, what examination, if any, did you make of the slough that appears to be, to run into Dustin Pond on the south side?

A. I didn't go that far over, so I couldn't tell, I didn't see any indication of any slough where I was.

Q. You are not prepared to testify as to the slough?

A. No sir.

Q. What distance did you go over east in Old River?

A. East of Old River?

Q. Go east in Old River?

A. About 650 feet.

Q. You are not prepared to testify whether there is a slough of water there or not?

A. No.

Q. You have them in your map that you drew there, you have designated that body Old River, why did you do that, and what data did you have to base that information upon?

A. This here, the circular shape. From my knowledge of the Mississippi River and the data which I had obtained from the Government surveys from the meandering of the line in '33 and '35, and other dates as well as from the course, which this narrow channel here and this wide channel below, and the narrow channel up here as taken, and following the course of the river of '33 and '35, and the fact that being '33 and '35, one side and '48 when this begun to fill up, the water receded from the Mississippi shore, filled up here in what is now Section 6, which wasn't in existence at the time of '35, except a very narrow piece and became here over three-quarters of a mile wide and accreted land on this side, east side, it naturally throwed the channel of the water down toward the Mississippi shore, and it took off a slight piece here and a slight piece up here, also a piece away up here in Section 35, and made some land for Mississippi in Section 26 about a quarter of a mile wide. Then right here on the range line, from this corner

172 here of Section 12, the southeast corner of Section 12 in '33, the distance was sixteen and a half chains to the line of the river in '35. Now, on account of this filling up here and throwing the river over that way, it made land here, so that instead of sixty and one half chains it is now a half a mile up to the Old River bed. Then the entire formation of this bank here shows that it must

have been the bank of the river and the caving bank along Section 11, in Section 10, in Section 3, and the very length of it shows that that must have been the Old River bed and couldn't have been a lake.

Q. What other reasons——

Plaintiff objects, and moves to exclude the answer of the witness to that question, because it is purely from theory.

(The Court:) I think some of it is incompetent. I overrule the objection.

Plaintiff excepts.

Q. What other reasons, if any, reasons have you than those that you have given?

A. The very fact that you have here a high bank, that this land is here where I have been on that part shows an actual filling up, while this below here has no indication of any filling whatever, and the fact that some trees over here got fifty-five to sixty years old.

Q. What information did you obtain from a general rumor in the neighborhood as to the name of that body of water, if any?

(Fitzgerald:) I object to the leading question.

(The Court:) I overrule the objection.

Plaintiff excepts.

A. On that morning when we commenced our survey——

Q. I mean generally, not any particular person right now?

A. Generally, the Old River.

Q. By the people generally?

A. Yes sir.

173 Q. What else did you hear it called, if anything?

A. We were looking for the southwest corner of Section 11, which is an old established corner, an old darkey came to us about a quarter of a mile east——

Q. Who was he?

A. He said his name was Charles McGhee, that old man testified here, we asked him where the corner was and he said, come on and I will show it to you, and he came over and showed us that corner. While we were getting ready to do the surveying Mr. De Chau in my presence and in the presence of Mr. Calhoun, asked old man McGhee if he ever heard of Pecan Lake, no, what is that called in here, he said well that's called Mud Lake.

(Fitzgerald:) We object to that what some man may have stated to him.

(The Court:) I sustain the objection.

Defendant excepts.

Q. Now Mr. Schlierholz if there is anything else that you know that is material to either of the parties to this suit that I haven't specially interrogated you about, I will ask you to state?

A. There is one point, that I would like to call the attention of

the Court and jury to and that is this: On a line between Section 3 and 10 and 28, 5, the attorney for the plaintiff tried to make it appear that Old River had cut into the slough and had gone up in a northwestern direction. There is *no* absolutely no such a thing, it is a chain and a half of my land between the well defined banks of this Old River and that slough, and unless the river here rises about, ten to fifteen feet, it wouldn't have any connection there at all.

(Fitzgerald:) We object to that statement because the attorney for the plaintiff absolutely repudiate any such idea or action for counsel or witness whenever he says this; I never made any such statement I never thought of it.

(Witness:) It wasn't you, it was your partner asked that question.

174 Q. That all Mr. Schlierholz?

A. That's all that I remember.

Cross-examination:

Q. How wide is the river here?

A. The river here just now, as near as I could tell is over three-quarters of a mile wide on account of the sand bar bank in here and coming over in here.

Q. What do you mean by near as you can tell, didn't you triangulate it?

A. Not across here, it was triangulated across here.

Q. How do you know it was?

A. Because I know if from a survey it was triangulated.

Q. Who told you that?

A. I have the notes.

Q. Who was that?

A. Mr. Griffith.

Q. Who was Mr. Griffith?

A. A surveyor.

Q. When did he triangulate it?

A. In '12, it was at that time sixty four chains wide.

Q. He told you that he triangulated that river?

A. I have the field notes.

Q. Oh, that what you drew the map from?

A. From the field notes that he surveyed of it, it was a careful triangulation.

Q. How do you know?

A. Because I have the figures.

Q. How do you know it was a triangulation?

A. Because I know it.

Q. How, were you there?

A. From my knowledge of the gentleman, and from the fact that the Government engineer was with him.

Q. You understand, Mr. Schlierholz, I don't wish to antagonize you at all, all I am asking you for is to get out the facts, I want to know whether you——

175 A. I testified and my knowledge from him, from his field notes.

Q. You mean he is a nice gentleman and good surveyor, and believe he did it right?

A. I know he is a gentleman and surveyor, and knows his business.

Q. And that's the way you judge that that river is that wide?

A. Yes sir that river was sixty chains wide, a little over sixty chains wide at the time of his survey right across here.

Q. Did you also know Mr. Purvis?

A. I know his reputation.

Q. He give you that too didn't he?

A. I haven't seen Mr. Purvis for years.

Q. Didn't you tell me you all drew——

A. I have his field notes.

Q. You all drew from his field notes?

A. Yes sir.

Q. Is also made from his field notes?

A. From Major Fontaine and his field notes.

Q. And not from an actual survey on your part?

A. No sir, I made no survey.

Q. You made this entirely from the field notes?

A. Yes sir, the Government field notes.

Q. And you didn't make it from any map at all?

A. No, what do you mean?

Q. From any map?

A. From any survey you mean?

Q. Yes?

A. Yes sir I made it from a Government map.

Q. I am asking you if you made it from the field notes, or from the map?

A. I had to have field notes first, to locate a corner, no man in God Almighty's world can make an accurate survey without you have a connection over on the Mississippi side, which was absolutely an independent survey, independent range line, and independent meridian.

176 Q. And made how long afterwards?

A. And made seventeen or eighteen years afterwards, when the river hasn't made any changes.

Q. Now in '48, which was sometime then after the Mississippi survey, you don't know from these lines where the river -as then in '48?

A. No, except those parties that were right on the ground can tell exactly.

Q. So, in delineating these channels here, you are simply delineating where the river ran at one time?

A. I am delineating it from the surveys made up this channel as it appeared twelve years ago.

Q. Who by?

A. By Major Purvis, and Major Fontaine.

Q. Where are they?

A. They have got an old map here.

Q. Let me see it, just a minute, now you say Mr. Schlierholz you made this map here from this map?

A. From the Mississippi River survey, as well as from the notes I had of the northern portion of this map, and a deed that I had in my possession, which described somewhat the boundaries here.

Q. And who made this map?

A. I don't know, I found it among some old papers, have no idea who made it.

Q. Use that in connection?

A. There, about a mile and a half north.

Q. Now you say, you have a survey made of the Arkansas shore in '33?

A. No sir I didn't say that.

Q. Didn't you testify to that this morning?

A. No sir I said I put in a line of '33, has to be shown on the map.

Q. What map?

A. Of '33, where it run parallel with the shore line of the Mississippi shore.

Q. Where is that? Show me that?

177 A. You have it on the exhibits, I will get it; right out there is one, there is another one.

Q. Now, show me, you mean you delineated the channel, you mean you ran it our here.

A. Let me hold that right here and show you, here is Section 30, and here is Section 19, here is the line of the Arkansas shore coming around like this Mississippi shore, it runs right here just exactly, making the field notes on the west line of Mud Lake and then it stops right here in '31, this survey here that is four chains from the corner of 31 and 32, now you will see this width of the river here and transpose the same width of the river as this right here on the scale here, and by the Government, and made the river on this map just as wide as the river is shown on this map.

Q. Don't you know, Mr. Schlierholz, you have been looking at these maps, you say, and you have been working in the Government Land office?

A. For the United States?

Q. And in the office of Little Rock, wherever you worked don't you know when these people, when they made that map didn't intend to delineate that map right here?

A. Yes sir.

Q. How do you know they did?

A. From my personal knowledge of the work in the United States office.

Q. In '36?

A. Laid down to the survey and they had to follow those rules and had to ascertain the width of the river.

Q. Is there any way for you to tell from that how wide that river was there?

A. That river there——

Q. I will ask you another question: will you state on your oath, and from your experience as a surveyor that you would say from this map that river was as wide on that map, and no wider?

A. I would say that river wasn't wider than sixty chains, about the average width of the river was sixty chains about that time.

178 Q. You just drew that line from that little sketch of the river on the outside?

A. Yes sir.

Q. Don't you know that's simply a line drawn there by a surveyor to show the Mississippi River, don't you know every map has here, that the river is very near the same width where it shows that little line?

A. Not where there are islands, take the river right here, it is a mile wide.

Q. Do you mean to say they surveyed here, and know how wide that is?

A. Except they were told in the manner of surveying they should take care of all islands in the river at navigable streams.

Plaintiff objects to what they were told, unless he can show what they did do.

(The Court:) I sustain the objection.

Defendant excepts.

Q. There is no way to tell from this map, except from what you propose to know that this river is that wide in there, there is nothing on the map to indicate it?

A. Except the scale by which it was formed.

Q. Do you mean to say this side of the river on the outside is drawn by a scale?

A. Yes sir, that is supposed to be, that's what the men are told in the office.

Q. Who supposes it to be?

A. The Government of the United States, and their instructions.

Q. Have you any such instructions as that?

A. I have them in my home.

Q. Have you got them where you can get them?

A. No sir.

Q. You drew this course of the river, judging from the outside sketch of that river?

179 A. Yes sir.

Q. And you called that then an Arkansas survey of '33?

A. That's why I put down probable shore, might have been five-tenths more and five-tenths less.

Q. So, I repeat again, you drew the Arkansas bank in '33, because you drew it from the outside sketch of the river as made by the surveyors of Mississippi, the U. S. Government surveyor.

A. Not the surveyor of Mississippi, the United States Government surveyor.

Q. I say in Mississippi?

A. That's right?

Q. I will ask you to take your scale and measure from this shore here to the old shore here, and see how wide it is, that is, for the information of the stenographer, that point is, taking it from the center of Section 11, Township 28, Range 5 in Mississippi to where the old line marked probable shore of Arkansas in '33 crosses Dustin Pond?

A. Fifty chains that point.

Q. Now measure that from the same point?

A. That is fifty-five chains.

Q. How much difference?

A. About five chains.

Q. And so then your map there disagrees even from the date?

A. I told you I made it about fifty-five, or fifty chains.

Q. You take an oath it was fifty?

A. Several others, it is fifty-five from the map.

Q. You take a general average?

A. Yes.

Q. And just drew that river from an average?

A. General average, like it is always done in those cases.

Q. Now this Old River here where you have drawn a channel, you say you never were down here before?

A. I said that I never had been there until November of this year down here; I have been up here to Friars Point before.

180 Q. And you are able to swear just from looking at that, the few days you were down here and tramping over to where this timber was cut, you are able to tell from that and swear here before this jury that this Pecan Lake, or Old River, as you call it on your map, central, or thread of the river, I believe you have got it, you are able to tell them positively that that wasn't caused by a break in the river here, right in here into a cypress break-, as testified to by one of the witnesses?

A. I have practically said that that couldn't have occurred for this reason: had the break occurred as the old darkey stated, and had come in with such a force as to scour out the river ten or fifteen feet, it would have cut right across here, and gone down in the low place called swamp below here and made another cut-off in the Mississippi River.

Q. Why, do you say?

A. Because the natural inclination of the low ground runs that way?

Q. Did you take the levels?

A. I could see without taking the levels.

Q. Do you say the land here is lower than the bottom of Pecan Lake?

A. Pecan Lake, at that time, was very low, and the water rushed in and scoured it out very deep, if that had been the case, and such a force, would have come in a southwestern direction, that it must have come, according to his say so, it would have made a bend of forty-five degrees, an elbow like that, but it would have showed, according to that natural inclination, into that low swag in here and

gone down into the cypress brake and down the Mississippi River some four or five miles below here.

Q. It would have had to break the levee?

A. There was no levee there.

Q. The levee was there?

A. If the water came in such force as he said, that levee he
181 spoke of wouldn't have been more than a mole-hill.

Q. Not knowing how deep this was in here as a cypress break, not knowing how high this levee is, you are yet willing to come up before this jury and swear that you wasn't a prong into that break and further down Pecan Lake wasn't the deeper part of the cypress break?

A. For this reason: it is an impossibility for the Mississippi River, and for anyone who knows how the water of the Mississippi runs and the current it has to go to work and run in a southwestern direction with full force to scour ten or fifteen feet out of the break, and then immediately make a turn in an elbow there, that's against all nature.

Q. You testify that it scoured out?

A. No sir, I didn't test-y it, the negro testified it.

Q. Why, did you say it did scour it out, you said its caving bank there, and the water rushed in there with a rush, and that's what, caving bank?

A. I said the river came down here and caved when the river——

Q. Was that the central part of the current?

A. You had the original bank of the river right here, and it commenced to cave until that cut-off occurred.

Q. Now, when it caved out to here, and when it was caving in here with such a force, why didn't it go where you say it was low?

A. Evidently at that time the river made a cut-off and ceased this bank from caving, as it must have been caving up until the time the cut-off occurred.

Q. While we are speaking in theories and evidently, let me call your attention to another matter, you heard Mr. Mashburn testify that he went through here in a boat, and then he went into this end of it, and walked along here and going again in a boat in the connection between Dustin Pond and Pecan Lake?

A. He went from this place here.

Q. And walked from here down to Pecan Lake?

182 A. I don't know anything about this over here.

Q. I asked you the proposition; you heard him testify to that?

A. I heard him testify he went in a boat from there.

Q. You didn't hear him testify that he went from the connection in here?

A. I heard him testify that he saw a small connection of water here that run down, that's what I heard him testify.

Q. Did you hear Mr. Mashburn testify from his map here, which I present to you, that this small prong of water which extends down to the northeast, or southeast from Dustin Pond, and he has got

marked, on to Pecan Lake, that at the time that he went there, that there was a physical water connection all around it?

A. I heard him state there was a narrow channel.

Q. Now, if there is such a channel there, and that channel is a well defined channel, and there was water in it, will you say positively, that the river didn't run at that time right through here where you have got the probable shore of Arkansas in '33, and that this land in here was an actual island at that time, and that when this cut through here down into Pecan Lake that that was a bare cypress *break* on this side of the island, and when the river cut in over here it made an entire change, an island.

A. If there had been an island here, the United States Government would have marked it, there is no such mark on any Government plat of any such island, except here, and it would have been absolutely impossible for that island to have existed there after that survey of '33.

Q. I am not asking you about '33, I am talking to you about '48 when this river cut off there was no survey made here in '48 was there?

A. No sir.

Q. Didn't you testify on the witness stand a few minutes ago that in fifteen years nobody knew how that river changed?

A. No, in one year.

Q. Is it not possible, if this surveyor testified to those
183 physical facts, and if he has testified there is a well defined channel between this land here and the original Arkansas shore here, that that river ran in through there sometime about the year '48, I don't speak of '33 when that survey was made, or '15 when this survey was made, but I speak of '48?

A. The simple fact that the contour of the northwestern part of the Old River, which runs along Township 28 and 29 North, Range 4 West having changed its course from a half a mile to nearly one mile toward the west and made it a depression towards the south and took land away from Section 11 and 10 and 3, shows that the river could not have formed an island in here, but the accretions west, out towards this way and the river, formed right there where the old bed of the river is now, what you call Old River, and we call Pecan Lake.

Q. I notice you have delineated in red right below Section- 22 and 23 in the State of Arkansas, what was delineated also in the Government maps as an island?

A. Yes sir.

Q. You have delineated that in skeleton, in red?

A. Yes sir.

Q. I also see you have drawn your old river channel directly through that island, the Government survey, why did you do that?

A. Because of the map of '33, and taking that river to be fifty five to sixty chains wide, that river has gone and cut off some of that island and put it in the river of '35, and today this old channel up here runs through a neck of the old line of '33 and takes off one there on the island and puts it over on the Mississippi side.

Q. Now, then, you couldn't say then that between this channel in here, where you have got marked old channel that the Rust Land & Lumber Company don't claim any of that land?

A. Don't claim any of that land in here; never did, outside of this old channel here, never did.

184 Q. Now, while we are speaking of lands, I notice you introduced some tax receipts, you say you paid the taxes on these lands?

A. The Rust Land & Lumber Company paid them, I have charge of that.

Q. Now, I will show you this tax receipt that you added up here a while ago, it is 1912, marked Number 22, I see that you have added up 1,419 acres?

A. Yes, that's the total amount we own on the island, according to the tax receipts without the accretions.

Q. Now, this little section- 23 and 22, at the time of the original survey, how much did it have in it?

A. I expect it had about 75 or 80 acres altogether.

Q. Twelve in one and fifty-six in another.

A. That's about right.

Q. What are you paying taxes on Section- 23 and 22, how many acres?

A. Sixty-eight and one half acres.

Q. How much in Section 23?

A. That is altogether in 23, and 22.

Q. How much in 23, are you paying?

A. 12.7.

Q. How much are you paying in 22?

A. 56.33.

Q. How much are you paying taxes here in 1912?

A. Same land.

Q. 56 acres and 12 acres?

A. Same land.

Q. How about that in 1911?

A. Same land.

Q. Never did pay any taxes on those accretions down here?

A. No, but we paid taxes on lands the river had taken away from us to a great extent.

Q. I understand, I want to know if you paid taxes on this land in here?

A. Because we haven't been assessed.

Q. That is the land in controversy?

A. There is a great many accretions haven't been assessed.

185 Q. There is a whole lot of that land in controversy on which you paid no taxes?

A. Yes sir.

(Fitzgerald:) I move again to exclude this map exhibit 4, your Honor has heard the testimony here and I don't think it is perfectly fair to us to have a map introduced here which has been

drawn by a half dozen different people that is taken from maps he knows nothing of.

(The Court:) I overrule the objection; I think all of those questions are questions for the jury.

Plaintiff excepts.

MAJOR LAMAR FONTAINE, a witness introduced for and on behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Q. Your name is Major Lamar Fontaine?

A. Yes sir.

Q. Do you live in Coahoma County?

A. I do.

Q. How long have you lived in the Mississippi Valley in the State of Mississippi?

A. Since '68.

Q. Have you ever, prior to that time been in the Mississippi Valley?

A. Good many time, sir.

Q. What is your profession, Major?

A. Civil Engineer and Surveyor.

Q. How long have you been a civil engineer and surveyor?

A. Since, on my hook, since the 20th of June '49.

Q. Are you acquainted with the lands on which the timber in controversy in this suit was cut and the accretions surrounding and adjoining it?

A. I have never been on the plat of ground, the exact spot where this timber was cut.

Q. Have you or not, been on Horseshoe Island?

A. Yes sir, good many times.

Q. Were you acquainted with the course of the river there in '49.

186 A. Yes sir.

Q. When did you first see the river at that place, Major?

A. Both in '37 and '38.

Q. Did you ride along the river and see it along there then in '37 and '38?

A. In '37 and '38 we were camped at what is known now as Dundee in Tunica County, on the Yazoo & Mississippi Valley Railroad on the bank of Bear Lake, my father and Jake Thompson owned about ten thousand acres that extended from the north end of the present town of Dundee, down to Muddy bayou just north of Lula; it was known then, we named it Red Bud where we were camped.

Q. When you say we were camped, to whom do you refer?

A. I mean my father, Jake Thompson and two surveyors and thirty or forty negroes and four Indians.

Q. On what occasion did you go to the bank of the river at Horseshoe Point at that time?

A. The Indian who took charge of me in hunting, I was but a boy about 8 years old in '37, and we would ride from that place

down Phillips Bayou to Moon Lake, cross over the pass on the east side of Moon Lake down by Delta Point in this country and down by Friars Point and down this side of the river, the east side of the Horseshoe Bend and around the tow of the Horseshoe Bend down to Ward Lake, where there lived an Indian called Chief Charlie, who owned a plantation there then of about 320 acres in cultivation, and we would hunt with Charlie, sometimes stay all night at his house and then go back up to our camp. We were camped at Dundee about six months altogether, the negroes were deadening the lands there around Dundee, south of it down towards Lula, and the surveyors were cutting the lines out again. My Grandfat-er at the time was surveyor General of Public lands south of Tennessee, and he sent these two surveyors in there to mark out this land that they had purchased from the Government, that my father and Jake Thompson, purchased, and sometimes we would ride
 187 those trails that they cut in those days up here, made several trips down to see old Charlie, and they were kin folks of an Indian that was with me, the only fat Indian that I ever saw, weighed about 270 pounds, named Fat Bob.

Q. Major, I want to ask you if you saw that bank, the Mississippi bank of Old River or not of the Mississippi River around south of Horseshoe, around Horseshoe Bend?

A. Our trail—

Q. After the cut off was made in '48?

A. I see that everything is registered here as the cut-off took place in '48. I passed through the cut when the first steamboat that went through the cut-off in '49, there was a flat boat in front of us, that instead of going down through the cut off, turned in towards Arkansas shore to the south and took the chute that went in that direction, because there were a great many trees falling there in the river where the meandering of the banks, undermining of the banks was taking place, trees were falling, some fell over a hundred feet long and it landed at a field that the cut-off had gone through and stayed there, and we didn't go through the cut at that particular moment, but turned down on the Mississippi shore and cut across to a little toe head that was right,—I see at the end of the line between 30 and 31, in Town. 28, or 29 Range 4 West. There was a small island there and the man named Miller had a wood yard right opposite of the upper end of that island.

Q. That was how far from the south point of Horseshoe Island?

A. It was about, let's see, about three miles north of it.

Q. I mean south of Horseshoe Island, how far was it from the main land?

A. Well, I say this place was about three miles north of the tow of the Horseshoe Bend, this chute.

Q. I am asking you now about the banks on the Mississippi shore, did you examine those banks, or not, did you see them?

188 A. Well, I didn't in the steamboat trip.

Q. I mean in '49 at all?

A. I say, I didn't examine them then, but in the Fall, in the Winter of '37 and '38 those banks were crumbling a little, not a

great deal, but you could see in riding along that there was fresh dirt caving off in that time.

Q. Well, now, in '49, the year after the cut-off had been made——

A. I didn't see the banks then, I don't know how the banks were in '49.

Q. How were they prior to the cut-off, were they caving banks on the Mississippi side or the Arkansas side there?

A. Well, I would call it the Arkansas side because that was the Arkansas town in Township 4, Range 4 East of the principal meridian.

Q. I mean right south of the Arkansas shore, at that point on the Mississippi side, were the banks caving or not?

A. I couldn't say that, we didn't go that far down, because we didn't go any further west than Old Port Royal, which stood about thirty rods east of the present head of what is known now as Rice Bayou, that is as far west as we went, and on the map, it is shown by the surveys there that that was about 220 or 230, may be 250 yards east of the range line between ranges 4 and 5 west in Township 28. We didn't go beyond that though, we started to go across the open waters, a broad open space, you could see a willow bush up in the top of it out of the water to the north of us next to the Arkansas shore, but the,—we intended to go that way at the start, and the pilot told the captain that the head of the mouth——

Q. —Never mine——

A. —Was filling up with trees and things, and we had better go back the way we started.

Q. Did you ever make any surveys of Horseshoe Island, Major?

A. On part of it, I have not all of it, sir.

Q. What part of it did you survey?

189 A. I ran as far south as the lines between 22 and 15 and 14 and 23.

Q. Did you go down to the south end of the accretions, or not?

A. No sir.

Q. Did you ever go down there?

A. No sir, not on my surveys, I never went further south than that.

Q. Than 22 and 23?

A. Yes sir.

Q. You don't know, of your own knowledge, anything about the formation down below there?

A. I could see them, sir, from where I was, the timber was sloped off toward the southwest.

Q. Can you tell anything about the character of the timber from what is now called Old River, or Pecan Lake going north towards the river?

A. Well the timber slops, the old timber is next to the old Arkansas shore, I traced down to the Government corners cut them out, cut the chips out on the line between 15 and 22, and I cut the corners out, that is the line trees, not the corners between 10 and 15—I never surveyed.

Q. What I am trying to ascertain, Major, is if you have any

knowledge of the character of the timber on the accretions south of 23?

A. I said only from my observation looking through there and walking down there, not surveying.

Q. I understand——

A. But, I have been down in it several hundred yards, I don't know how, I didn't measure the distance.

Q. How was the timber, if you know as to whether it grew smaller as you went south?

A. Yes sir, it grew smaller as I went further south.

Q. How far south did you go?

A. I went several hundred yards, just walking through looking at it with Mr. Fitzhugh.

190 Q. Did you go down as far as Old River?

A. Went in sight of it.

Q. When was that?

A. 1901.

Q. How wide was Old River at that time?

A. It was about, from ten to twelve chains wide.

Q. That would be how many feet?

A. Well a chain is sixty-six feet.

Q. Ten or twelve chains wide?

A. Six hundred and sixty feet in some places and eight hundred in others, but that I never measured it.

Q. You never measured it?

A. Only from a short time ago from this side, along the levee.

Q. Can you state the character of the banks of Old River?

A. Yes sir.

Q. How were the banks?

A. The banks on the south side were very high and the other sloped to nothing.

Q. Sloped right down to the water?

A. Down to the water until you could see little bunches of grass tips out of the water, little stumps of dead.

Q. How was the timber going from Old River north, did it grow larger or smaller?

A. Gradually grew larger until you got upon the ridge on a line between 15 and 14, there you got into a cane and elm and Oak, gum, old timber, five and six hundred years old.

Q. Have you ever been to the point south of what is called Dustin Slough, Dustin Pond?

A. No sir, I never saw, never have seen it at all, I have had lines run here last, this year right up from the southeast corner of 11 for a mile and a half, I didn't encounter any water there, and my son did the surveying.

Q. Are you able, or not to state Major from your observation and experience in these kinds of matter and from the observations
191 you have taken on this land, how these formations were made.

Plaintiff objects to that.

Court overrules the objection.

Plaintiff excepts.

A. Yes sir.

Q. Explain to the jury from your observations how these accretions were formed, coming from the island, if you can, to the north bank of the Old River?

A. Well, accretions always form in the rear of any obstruction that the water can't move. A heavier body dropped in the river snag, or a steamboat will form an island, and it will accrete from the north end down the river and the accretions will gradually spread out as the current is retarded, when the current is choked all the mud and sand and silt and voluble material in solution of the water, when it becomes still will drop upon the bottom, and as it rises to the surface of the water, why the little willow seeds and cottonwood seeds that fly in the air, they drop down there, and they will grow up in thick bunches like hair and as the river rises, and more silt and sand is poured down the little fibers and little weeds that grow up that way, little bushes will bank the sand and silt away out of the water and deposit them, and gradually grow wherever a current is checked, that's the effect in all streams.

Q. Can you explain how these particular accretions were formed there, Major?

A. On that same plan in the bends of the river where a bend is made, like my hand that way, the current running against the opposite bank here cuts this out; well a sandbar, the sand forms in a slop- down this, and pushes the water faster, by static pressure, the deepest water is near the front bank, and the sand slopes down gradually that way and forces it; and as it slopes down, the still water is behind this sand, and it drops it that way, and the accretions are so formed and pushed on as the river bank on the opposite side comes away, the sand doesn't give way and all the friable material that is in still water, and as it forces the water against this bank like a wedge force in there, the bank isn't as strong because it is composed of a great many kinds of mud, sand and gravel, and the gravel is light, and the water, it gives away, drops down, and the mud drops upon it, and then there is a muddy place and that water is whirled around in the force of a current, and the heavier particles are deposited in the still water away from this current, drops in there, and it gradually, the accretions gradually form, the erosion of the current itself.

Q. I want you to apply the principles to the particular accretions here, and explain how those particular accretions were formed from the Island down to Old River?

A. Will the sheriff take this map off, and let me have the blackboard under there.

Q. Yes, he can do that.

A. That represents, (Referring to drawing on blackboard) the two shore lines of '33, Mississippi, and 1835, this represents Arkansas in 1816; this dotted line, of course, it is not measured to scale, but just to show the action of water. This isn't the maps of it.

Q. Now draw the Mississippi River in the cut-off, Major, the line of the cut-off of 1848?

A. Now, according to the theory that I embrace of banks giving

away by sandbars forcing them towards the opposite bank, they always leave a mark behind them. We see here, a little island, small island there, a sandbar. Now, you will notice the indentation in the opposite bank; that sandbar makes out, follows that on account of still water opposite there; now here is a sandbar formed from the point of this island, this is supposed,—I won't draw section lines across it, for I want to measure it from this sharp point right here, this sharp point, and this coming in here, this was bound, with that, to have filled up in that position, and you can see that this

193 checking of the water here, flowing against this, threw the mud over on this side, and this is called Mud Lake; now, this checking of the water, if it ever went through there, filled up in here, the mud was thrown by that protecting point that it couldn't wash away and it put the mud in this side, it forced it and threw the current here, then it cut in this way. Well, the rush of the water then, when it couldn't cut further here, turned this way, and it acts in this way.

Q. Along what line, Major, so the stenographer can get it in the record?

A. On the Mississippi shore, on the south end of the Horseshoe, when the water, when the mud filled in mud lake, the current was changed from Mud Lake and shoved southwesterly, and we will say that this was the, this point that I marked and call "A", marked on the plat as "A", was a range line we will say, and "B" was the head of Sunflower River out of Mud Lake, or Rice's Bayou, it is called now. This rush of water here, cut this bank first; this mud and sand came down filling in here and forced the river to the westward and passed the line, the range line and cut in to the south on the Horseshoe on the Mississippi shore. The accretions formed, the still water, on the Arkansas side, followed around in the direction that you see those points, marks from the island.

Q. Where then was the last stand on the river, Major?

A. The last stand.

Q. Yes?

A. I couldn't tell you that because the bank, this section line, the range line run about, here, sixteen chains and something. This stand, coming away now from this map here, take this island away this filling up in here, this checking of the mud in this position, threw the channel in that direction and took off this point, and the river changed in this direction, when this Old River filled up, cut off a piece of this of Arkansas, southwest point.

194 Q. How did the accretions form?

A. On this side, on the Mississippi, southeast and then became solid, then the accretions begin to form directly south of the old shore line of Arkansas, and cut in deeper into the Mississippi shore this way, and gradually increased until it came down to the north end of what we call Section 11; and, in the north end of Section 11 was the deepest cut in the whole of the shore line of Mississippi in Township 28, Range 5 West, and it cut into the lake that is shown on the original Government plats, a lake that ran parallel with the Mississippi River and turned southwesterly. Well, the

waters, as they accumulated in the rise here sweep in here and come down that old lake, and make it a larger lake, and when that was taking place——

Q. The lake you spoke of, what is that Major, delineate it now?

A. Old River, or the northwest end of it; the north end of it was known as Pecan Lake. I have heard it called Pecan Lake.

Q. What is the difference between Pecan Lake and Old River?

A. None.

Q. The same body of water?

A. The cut-off, the check was going into this, the outlet was going southwest in the old lake, that lay west of the original bank of the river in Section 11 on the west side.

Q. Now Major, I will ask you if you have ever seen this map, which was introduced in evidence?

A. I saw it up here, sir.

Q. In connection with the testimony of the other witnesses?

A. I saw it on this place, it doesn't show what I wish to show, if you will hand me the township map——

Q. What I want to ask you, admitting that map to be correct, if you can state how these formations were made between Dustin Slough and Old River?

Plaintiff objects.

195 A. I don't know anything about any of those sloughs, nothing in the world, I don't pretend to know, because I have never been down and examined the topography of the country, but in the Government plats, I can show the lakes that the original bank cut into, and let the jury look at them. You will notice there on the western line, and I can explain to you, that this half a mile post on the west boundary of Section 11 is standing yet with the Government marks on it, was Sunday a week ago, the original line.

Q. That is Arkansas you are in now?

A. No sir that is in Mississippi, I am in Township 28, Range 5 West. The river, the south end of the Horseshoe cut into this lake that you see upon the Government plat, and started a current down this direction southwest. The cut off took place before that was sufficient to make a river to make the cut off there, the cut off came down at the north end of the Horseshoe and checked this flow of water there and filled the place up. Now, as this river cut into the southwest on that shore line of '33, the shore line of 1816, of Arkansas followed the accretions and followed southwest all of the way where you see those striped marks in a southwesterly direction, entirely keeping up the equilibrium generally of the width of the river.

Cross-examination:

Q. You say you have never been down there at the Dustin Pond?

A. No sir.

Q. You can't testify as to that?

A. No sir, I only had my son to run a line through.

Q. These accretions that you speak of that have formed in there, all of that bed of the lake now, have been formed of course by high waters running through there since the cut off of '49?

A. No sir, I couldn't say that.

Q. You don't know when they were formed?

A. No sir, I can only judge from the shore line of '33 there and the shore line of Arkansas in '16.

196 Q. Well, take your point "A" there on your map, how wide was the Mississippi River between that and the Arkansas shore when you saw it in '49?

A. I couldn't tell you, sir, because the river was up so that you couldn't see the shore line, only willows, it looked like it was two miles wide across here, looks like this whole country was under water, and be impossible for me to tell the shore line.

Q. You could see the Arkansas shore though?

A. No sir, oh, you could see big timber on it.

C. W. GRIFFITH, a witness introduced for and on behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Q. Where do you live, Mr. Griffith?

A. Memphis, Tennessee.

Q. What is your business?

A. I am an engineer, and I specialize in the cru-sing of timber and surveying of various lands.

Q. You have, ever been in the employ of the United States Government?

A. Yes sir.

Q. What capacity, and what length of time?

A. I was employed for about three months when we were making a survey of the caving banks of the Mississippi River from Memphis to Lake Providence.

Q. Are you familiar with the land known as Horseshoe Island delineated on that map there?

A. I am.

Q. Have you ever been over it?

A. I have.

Q. When?

A. In August and September 1912.

Q. As well as you can tell from that map, is that a correct representation of that locality?

A. Yes.

Q. Have you examined the map carefully?

197 A. I have.

Q. Well, when were you last over that land?

A. In August and September 1912.

Q. Now, Mr. Griffith, taking the point there, the eastern point of Dustin Pond going towards the north bank of Old River, I will ask you what about the size of the timber as you go towards Old River, is there any change in the size of the timber as you go in that direction?

A. The timber adjoining the point is larger than the timber adjoining Old River.

Q. Does it gradually get smaller?

A. It seems to go in steps, you will go perhaps a quarter of a mile, and it will be approximately the same size, and go another quarter and it crops off perhaps two inches.

Q. Now, immediately east of the point of Dustin Pond, what about the size of the timber?

A. I will take approximately where my hand is in the center of Section 15, and covering that field, you will find in there, timber that is apparently over a hundred years old, and the cottonwoods in there, where there are any are so old that they are dying of old age, and you will find timber in there that you won't find any place else on the island, you will find oak and sycamore, and you will also find a bed of cane right around in there, and running right close up to the edge of this field you will find some oak trees right at the south bank of that slough in there, indicating that that land never has been washed by the Mississippi River inside of a hundred and fifty years.

Q. Now, what about the north bank of Old River, what is the character of that bank?

A. When you get within about three hundred feet of it, at the time I was in there in August, a dry time, you can't get into the water, we had difficulty in getting down there to the edge of the lake on account of the water.

Q. Is there a gradual slope down in that direction?

A. Yes sir, from the lower end of this cane line that I
198 spoke of in here in the north side of Section 22, and where that old timber is, there is quite a decided jump off in there, and then it is gradually lower here with the small ridges in there characteristic of mud land.

Q. What about the south bank of Old River, what is the character of that bank?

A. It is a steep bank, eight to ten feet high?

Q. Now how many connections are there between Dustin Pond and Old River, water connections?

A. One.

Q. Where is that?

A. Right here.

Q. At the point delineated on this map?

A. Yes sir.

Q. Now as you go westwardly along Dustin Pond, and northeastwardly, is there any body of water which connects Dustin Pond with Old River?

A. No sir.

Q. Have you been all through there?

A. I have run back and forth across this island from the north from the extreme south, and along the line that comes in here something like that which is known as the McKee premises at intervals of six hundred and sixty feet.

Q. So that, I understand you to say that you have been over

this land here between the northwestern bound of Dustin Pond, as shown on this map, Exhibit No. 4, and the north bank of Old River, and found no water in there at all, no water connection, is that correct?

A. Not connecting Dustin Pond.

Q. Not connecting Dustin Pond with Old River, is that correct?

A. Yes sir.

Q. I notice on this map, exhibit 4, a channel is indicated from Old River northeast to what is now the Mississippi River, and also northwest of what is now the Mississippi River, have you ever followed that line that is indicated on the map out in that direction?

199 A. In making, in running my trips back and forth across the island I have checked this channel all of the way around and up to where this McKee comprimises line comes in, from here on, I only know it by observation and walk back and forth from the island to Friars Point.

Q. You say you have traced it from here around, just describe that as shown on the map, so it can get into the record?

A. From the northwest corner of the island, where the Old River runs into the Mississippi River, I have checked the line of Old River as exhibited on this map, around to approximately the northwest corner of Section 6 as shown on this map of Coahoma County.

Q. Now, what is the nature with regard to whether or not there is a channel from the northwest corner of the island to the northwest end of what is now known as Old River, what indications of any prior channel do you find there?

A. There is a very plain channel, evidently a stream with steep banks on either side, averaging ten or fifteen feet high, with the exception at the north end of the old lake on the west side it flattened out in here, and the channel is very narrow at the time that I was in there, there was running water in there, running this way.

Q. You say it flattens out here, indicating on the map a place at the northwest end of Old River, which is marked on the map "Sandbar"?

A. That's it.

Q. Now taking the northeast end of Old River, you say that you have been across there that part of the island and seen the country in that way?

A. Yes sir, walked back and forth in there.

Q. Now is there or not any indication of an old channel from the northeast end of Old River, up to what is now the Mississippi River?

200 A. At places where I have crossed it, you will find ditches of water perhaps a half a mile long in there, and just below, down here, there is one particular place that I remember three-quarters of a mile long, four hundred and fifty feet wide, clear open strip of water, and I found the same condition down in here little lakes, lake along here, and this channel clear into the river is open with the exception of a sandbar right adjoining the river.

Q. Now you say you found strips of water that way, what about

the places in between these bodies of water, is there any indication of a channel between these bodies of water or not?

A. There is, just seems to have filled in there, here where the water is.

Q. What kind of a channel, what indications did you find?

A. Definite bank on either side.

Q. Are you a surveyor too?

A. I am.

Q. You made any surveys in this neighborhood?

A. I have.

Q. What have you done?

A. I went to an original corner on the Arkansas shore where the old Government marks show, the chips had been taken out, and I ran down this line between section on the west side of Section 3, set off a base line a half a mile long on this side of the river, with the aid of the transit, I obtained my distance across the river, and this section line on this side ran on south here, and located the southeast corner of Section 3.

Q. What did you find the width of the river to be at that point?

A. Something over four thousand feet.

Q. What connection, if any have you, with the Rust Land & Lumber Company?

A. Only temporary.

Q. How long have you been connected with them?

A. I have been employed by them three times for the purpose of cruising timber and making a survey.

201 Q. Now Mr. Griffith, between the northeast point of Dustin Pond and Old River down here, in going over that country in there, did you find any indications of an old river channel in there?

A. I will have to take exceptions to a former statement that I run strips every six hundred and sixty feet, when I got in here which would be in the west side of Section 22, and the northern side of Dustin Pond, the mud and water became so bad that there was a space of about 40 acres across in there, that I couldn't get on, that is all very low on the northern side of Dustin Pond.

Q. Taking this country in here between the northeast corner of Dustin Pond and Old River, what about that?

A. The north side of 22, and the south side of 15, east of this slough shows, running north and south on the east side of the field is very high land from here, it indicates made land perhaps sixty years old, from here out to the shore line of the old river, and also made land ten years younger.

Q. Is there any indications of an outlet from Dustin Pond on the north up that way?

A. There is a slough that runs on up here, and in August, we found dry walking across it, right across there, we were camped in that field.

Q. I didn't get exactly the directions of that slough, call the directions there?

A. This one here?

Q. From the slough you last referred to?

A. It runs from a northeast point of Dustin Pond as shown on this map No. 4 and north two degrees west, and the water, in the dry season, ends at the lower side of the field.

Q. It is on the west part of the island, isn't it?

A. Yes sir, it runs up this way.

Cross-examination:

Q. You say that the lands just east of the lines running between Sections 22 indicates made land?

A. Yes sir.

202 Q. That is, that at one time, so it was indicated to you that the river ran close to that line?

A. Came around in here.

Q. Now you wouldn't say, would you Mr. Griffith that there is not a physical connection on the east and south of Dustin Pond would you?

A. Yes sir.

Q. You heard Mr. Mashburn testify, did you not a few minutes ago that he walked the entire distance around?

A. Yes sir.

Q. But you are satisfied he is mistaken about that?

A. I am not satisfied that he is mistaken, I am satisfied I did walk across there dry shod, that's the only place in the island I could walk.

Q. Did you attempt to find any outlet down this way?

A. If there had been any there, I would have found it, I ran strips across.

Q. You ran strips down here?

A. Yes sir.

Q. Every six hundred feet?

A. Every six hundred and sixty feet.

Q. But you say also on the northern bank of Dustin Pond is very low?

A. Yes sir.

Q. And the land on the south bank is very low?

A. No sir.

Q. How is it?

A. It is low also, but not as low as that.

Q. How is the timber on the north bank of Dustin Pond?

A. That is willows.

Q. But, how is the timber in here, on the south bank of Dustin Pond?

A. That is about thirty-six inch cottonwood.

Q. Indicates a good deal of age?

203 A. Yes sir, not exactly older than this timber, because you will find it is dry from up the west side of the island, that the cottonwood hasn't, next to the river the cottonwood hasn't come in like it has on the rest of the island.

Q. I am asking you what the size of the timber was, you say about thirty-six inches average?

A. Yes sir.

Q. Now going west from Dustin Pond, what is the size of the timber south of 22?

A. It is about the same.

Q. Now, is there any physical fact there that shows that there was ever a river bank in here, where you say that is made land just east of the line between Section 22 and 23, 4 North, 4 S. I believe it is in Arkansas?

A. Yes sir.

Q. There is an indication that the bank was in here?

A. Yes sir.

Q. Right in there; now in following that bank down, where did you find it, did you follow it down, or did you just run your strip straight line?

A. Well, I run my strip straight across when I completed that station.

Q. You found that that bank extended down here too?

A. Yes sir.

Q. And then the current took a change right up this way?

A. This high ground, as I said, is right in there.

Q. How many acres you say is in that field, do you know?

A. I have, and there is about a hundred and sixty acres.

Q. In cultivation?

A. Yes sir.

HENRY BOWIE, a witness introduced for and on behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Q. Where do you live Mr. Bowie?

A. Live down at Millers Bend.

Q. Coahoma County?

A. Yes sir.

204 Q. How long have you lived in Coahoma County, Mississippi?

A. Well, I have been living there about fifteen years.

Q. You in the employ of the Rust Land & Lumber Company?

A. Yes sir.

Q. What kind of employment?

A. Just merely looking after their property, that's all.

Q. Do you have in your charge body of their land known as Horseshoe Island?

A. Yes sir.

Q. Shown on that map there?

A. Yes sir.

Q. How long have you had that in your charge?

A. I have had it in charge six years.

*Q. How long have you been familiar with that body of land?

A. Well, sir, I have been familiar with that body of land about twenty years.

Q. Do you know the body of water that bounds that on the south known as Old River?

A. Yes sir.

Q. Ever hear it called anything else but Old River?

A. Never did.

Q. I wish you would look at that map, Mr. Bowie, and see whether or not that correctly represents that body of land and that strip of land as you know it? This is indicated on here as Dustin Pond, this blue body down here as Old River?

A. Yes sir, I see it—Well, the map shows that, indicates the Old River al-right as far as I have heard.

Q. He meant the old channel?

A. The old channel.

Q. Taking a body of water still there that is marked Old River, does the map correctly show that?

A. Yes sir.

Q. Have you ever been all around this island?

A. Yes sir.

205 Q. Is there any indication of an old channel from the northeast corner of the island to the northeast end of the water that is known as Old River?

Plaintiff objects to leading the witness.

Q. Well, I will ask you then what the nature of the country on the east side of Horseshoe Island?

A. What is the nature of it.

Q. Yes?

A. Well, there is a kind of a flat in there on the east side and into Dustin Pond, as I have known it to be, and then on the bank of Dustin Pond, on the east side, there is some tolerably heavy timber, and then the timber runs, further around you get then, the timber runs smaller.

Q. Now, coming back here to the northeast end of Old River, and going from there up towards the present line of the Mississippi River, what do you find up there?

A. Well, I don't find anything up there of the Old River, but just the channel that I have known as the Old River channel all of the time.

Q. You do find a channel then do you from the northeast end of Old River up to the present Mississippi River?

A. The original Old River that I know.

Q. What is the nature or character of that channel?

A. Well, in which do you mean?

Q. I am talking about now from the northeast end of Old River up to the present Mississippi, do you find banks on either side or not?

A. Well, yes sir.

Q. Can you trace that channel all of the way up?

A. Yes sir.

Q. Now, taking from the northeast bound of Old River to the present line of the Mississippi River, how about that?

A. There is a channel all of the way through there, banks on either side where it empties into the main river, and where it goes into the water.

206 Q. Now from the northeast point here of Dustin Pond as shown on this map of Exhibit 4 to the north bank of Old River, have you been over that country?

A. Yes sir.

Q. Much or little?

A. Well pretty well once a month, something like that.

Q. Is there any water connection between the northeast bank of Dustin Pond and the north line of Old River?

A. No sir, not at this stage.

Q. How long do you say you have been in charge of this for the Rust Land & Lumber Company?

A. Six years.

Q. Have you ever known of anybody to make any claim, or cutting any timber on this land at this time?

A. No sir, no more than what they stole, I knew some parties to steal some timber in there?

Q. What is the nature of the bank on the south side of Old River?

A. What you have reference to?

Q. High bank or low bank?

A. On the south side.

Q. Yes?

A. Why, that's a high bank, a tolerably high bank.

Q. Did you ever know of this negro Charlie McKee, who lives down there cutting any timber down there, sold any?

A. No sir.

Cross-examination:

Q. Who do you know stole some timber down there, Henry?

A. Why there was some parties, Jack Brinner stole some timber down there, I wasn't in charge of them, be about twelve years ago.

Q. You didn't know anything about it?

A. Yes sir, I knew of it.

Q. Except what was told you?

A. I just merely seen the timber when it come out was all.

Q. You don't know where it come from yourself? You saw it come by but you don't know where they cut it?

207 A. I know where they cut this timber they stole.

Q. How do you know?

A. They didn't cut it in there.

Q. How do you know?

A. I seen it.

Q. Saw the timber?

A. Yes sir.

Q. Therefore, you know where it came from?

A. Yes sir, I know where it came from, they cut——

Q. You didn't see it cut?

A. No sir, I didn't see it cut.

Q. Didn't see the place where they did cut it?

A. Yes sir.

Q. When?

A. Right away after they cut it.

Q. You were there, and saw there was some timber cut here?

A. Yes sir, but not in there.

Q. Didn't cut it in there at all?

A. No sir.

Q. Where did they cut it?

A. Cut it right across the levee from the old crossing there where Chavanaugh used to live.

Q. Show me on the map where is that?

A. I don't know as I can do that.

Q. Wasn't on Old River at all?

A. No sir.

Q. Wasn't in there?

A. Hasn't anybody cut any timber where this was cut?

Q. These people in here cut some timber in there?

A. Yes sir, they cut some timber in there.

Q. Did you discover that cutting?

A. Yes sir.

Q. You discovered the cutting?

208 A. Yes sir.

Q. So you notified the Rust Land & Lumber Company?

A. Yes sir.

Q. Now, you say you followed out the Old River channel this way, this is going north through Section 3, then 34, you have followed that out there?

A. Been all around it, yes sir.

Q. You have never paid any particular attention?

A. Not to come down to facts, no.

Q. Well, then, you don't know the facts at all?

A. Well, I paid attention to it to a certain extent, that is to the place in there on Dustin Pond and to the banks of the river on the west side, such like as that, but when it comes to the map and go on and tell you what direction it is, that would be a different thing.

Q. You couldn't tell on the map, now running on out to the west of the island, the field, on the old island field, is there a spur run right close to that field, running down through the island?

A. Don't go through the island, no.

Q. Where does it go?

A. To the lower end of the field, and then into——

Q. Don't connect with Dustin Pond?

A. No sir.

Q. Did you ever walk all around Dustin Pond?

A. Yes sir.

Q. Now isn't there, from Dustin Pond, somewhere about this red line that I call probable shore of Arkansas in '33, isn't there a bayou,

or cut off in there that leads, come down through here into Old River, what you call Old River?

A. No, there is nothing but a flat.

Q. When the water stands in there?

A. Well, it backs from the river in there.

Q. There can be no water in there unless the river was up?

A. No, not at the cut off, there is water in Dustin Pond, but not to empty in.

209 Q. I mean this cut off between Dustin Pond and Pecan Lake, water doesn't stand there?

A. I don't know about Pecan Lake, but I know it has Old River.

Q. Water doesn't stand in there?

A. No, there is no water that leads into it.

Q. Man couldn't go through in a boat unless the river was up?

A. No sir couldn't do it.

Q. Now, up at the northern end of Old River, timber is pretty heavy right at the northern end isn't it?

A. Along the banks, yes sir.

Q. Pretty heavy, now a little over to the right of the north end of Old River, Dustin Pond runs into it, doesn't it?

A. No sir, not that I know of.

Q. Can't you get into Dustin Pond up into Old River at the north end?

A. No sir.

Q. Can't go through there in a boat?

A. No sir.

Q. Now, did you ever go along down south down in here below the field, say between two old plum orchards, you know, to the two old plum orchards there?

A. Yes sir.

Q. You don't know who put them there, do you?

A. No sir.

Q. Did you ever go along that land in there?

A. Yes sir.

Q. Is that all high land, or a swag in there?

A. There is a flat in there, a swag.

Q. Between those two?

A. But then, there is some high land in there of course it is ridges.

Q. But, there is a well defined bank up here, pretty close to the north, old plum orchard isn't there?

A. No sir.

210 Q. A quarter of a mile below it?

A. Well, no.

Q. There is no bank there at all?

A. Not that I could find.

Q. Is there any back over in here about a half a mile east of that old plum orchard showing made land out in there?

A. East?

Q. Yes?

A. Not that I know of, not that I paid any attention to.

Q. The fact is, you haven't gone all through to look after these banks?

A. No sir.

Q. You have been going through not paying any attention to the low places, or high places?

A. I was just looking after the timber.

Q. Top, or bottom of it?

A. All over it.

Q. You say you have had charge of it six years?

A. Yes sir.

Q. Of all of it?

A. Yes sir.

Q. How much wind, fallen timber have you cut down in there?

A. I expect about sixty thousand feet lay there all over the ground.

Q. I mean right in here on Pecan Lake?

A. I couldn't say just how much.

Q. Good many?

A. Yes sir.

Q. When?

A. Year before last.

Q. Tell me how far that was from Ellen Jackson's house across the pond?

A. A few trees, I suppose about between three quarters of a mile.

Q. A mile from her house?

A. Yes sir.

211 Q. In which direction?

A. Well, that would be pretty near north from her house.

Q. Was that above Dustin Pond, or below it?

A. Well, it is just here and there now that you spoke of that I cut this wind fallen, some part of it was on one side of Dustin Pond and some on the other.

Q. Was any of it on this side of Dustin Pond, on the south side?

A. Yes sir.

Q. Where did you put it to float it out to the river?

A. I put it in Old River.

Q. Isn't it a fact, it was closer to Old River than it was to Dustin Pond when you cut it?

A. Well, no, there is some of it was, and some of it closer to Old River, and some of it wasn't.

Q. Ever float any of it out from Dustin Pond into Old River?

A. Yes sir.

Q. Well, there is a place comes in from Dustin Pond to Old River isn't there?

A. In high water.

Q. Isn't there a place runs through there in low water?

A. No sir.

Q. Physical connection of water?

A. No.

Mr. HOFFMAN, a witness introduced for and on behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Q. You live here in Friars Point, do you?

A. Yes sir.

Q. How long have you lived in Coahoma County, Mississippi?

A. Twenty-three or four years.

Q. Do you know the piece of land known as Horseshoe Island now owned by the Rust Land & Lumber Company?

A. Yes sir.

Q. Do you know the body of water on the south side of that known as Old River?

212 A. Yes sir.

Q. How long have you known that locality?

A. Forty years.

Q. Been any change in the position of water known as Old River in that length of time?

A. There might have been some, very small change not of any notice.

Q. Do you know whether any fields in cultivation on that Horse shoe Island, or not?

A. Yes sir.

Q. Do you know anything about any fence on those fields?

A. Yes sir, I done it.

Q. When?

A. About nine years ago, ten years ago, somewhere in that neighborhood.

Q. Who did you do it for?

A. For Wood Cook.

Q. Who did they get the field from, if you know?

A. Got it from Dan Fitzhugh.

Q. How many fields did you fence?

A. Three.

Q. What part of the island were they located?

A. Well, the big field that is now in litigation was upon the head of the island, as I call it and about, well about a quarter of a mile below that, may be a little bit further, may be not quite so far, but say in that neighborhood, there is a six acre field, which is a negro since I have been in this country cleared up and fence it, by the name of Fred Farmer but men I had that worked for me, I then farmed there right, it ain't further than from here across the street, the lower end of it ain't from Dustin Pond, the twenty-six acre field there that I fenced.

Q. Mr. Hoffman, on this map put in the testimony as indicated by the green shade in there tinted, an old field, large one, and just below that another one?

213 A. This is the big field, that the head of the island.

Q. Yes?

A. There is another one down there, twenty-six.

Q. Those the two fields you refer to?

A. Yes sir.

Q. Is that location on that map approximately correct, that about right?

A. Well, I would judge it was, yes, that is, this is Old River as it used to be according to a survey that I was on with Lamar Fontaine, was according to the old survey. I was on with him, but Old River comes up this way, and goes along side of this field, and there is water in it now.

Q. Now this Dustin Pond here, is that a deep or shallow body of water?

A. I couldn't say how deep it is because I never measured it although I have fished on it.

Q. How long have those fields been in cultivation, Mr. Hoffman?

A. Those two lower fields hasn't been in cultivation not since I fenced them up that I know of, but this large field has been in cultivation ever since I have been in this country, forty odd years, this particular field.

Cross-examination:

Q. You say this lower twenty-six acre field, Mr. Hoffman is right on the bank of Old River?

A. No sir, I said it was right on the bank of Dustin Pond.

Q. Did you say that Old River run right up by the side of it?

A. Old River, as I said, comes up along this way and this is it, comes up along this field, this particular field, this big one.

Q. It don't come near the small field?

A. No sir, not so close, it comes within possibly two or three hundred yards, but then here it runs right along the bank, right along the field.

Q. So, how far is it from the lower end of the old field, the big field that you have got up there to the lower end?

214 A. This.

Q. Yes, how far is it to your knowledge, not as shown on the map but to your knowledge?

A. I expect it is fully a half a mile, I couldn't swear definitely, because I never measured it.

Q. About a half a mile?

A. Yes sir, to the upper end of this, and then it runs across twenty-six acres down to the Dustin Pond.

Q. You know the plum orchard there?

A. I certainly do, got many a bucket of plums out of them.

Q. How far north of the plum orchard is this little field that you are talking about, twenty-six acre field?

A. It's about to the island, now whether it is north or south, couldn't say, because I never noticed the locality or position down the island, down to the levee, you come here to the big field, you come in here from Friars Point to the big field and come right down this way.

Q. Now, when going down that way, do you first strike the plum orchard, or the field?

A. Well, you strike this little field.

Q. Now the next field?

A. Then you strike this one.

Q. And then the plum orchard?

A. The plum orchard is in this field, is in that field there.

Q. The plum orchards are in those fields?

A. Yes sir.

Q. So that plum orchard is, did you have it enclosed with a fence?

A. We did, with the expectation of putting the tenants in it and cleaning it up that spring.

Q. But you didn't do it?

A. No sir.

Defendant rests.

(Fitzgerald:) The plaintiffs move the court to be allowed to introduce one Harry Malone, whose name was not known to the plaintiffs until after the trial of this case began, and for whom a
 215 subpœnae was issued at the first day of the trial of this case; but, it was understood by the plaintiffs, without any official return, that the sheriff could not locate Harry Malone. Since that time, and since the motion was made before the argument for a peremptory instruction Harry Malone, the witness, has come into the court room and is here now. The plaintiffs state to the court that they expect to show by the witness Harry Malone the fact that Pecan Lake or Old River, as it is now called, was until 1857 a cypress break-; that the river in that year overflowed its banks where it is now situated and rushed through and down the channel with such force that it broke through the connecting land, and this cypress break- and the main shore, created what is known now as Old River or Pecan Lake. We expect to prove by this witness that there was a steamboat, the name of which counsel has now forgotten wrecked just about a quarter of a mile from the Mississippi shore, and that at that steamboat, there was formed a sandbar and land, which, at the time of the breaking through into the Pecan Lake was the physical connection with the Mississippi shore. We expect to prove by this witness, that he came into this country in 1840, and that since that time, he has lived within a few miles of this land in controversy, and knows the channel of the stream in '49 when the evulsion occurred, which placed the river in its banks where it now is.

(Montgomery:) The defendant objects to the re-opening of the case at this stage, and the introduction of any further testimony because at the calling of the case on Monday afternoon, the plaintiffs announced themselves ready for trial, and no application was made to the court at that time, or has been at any stages of the trial for any delay on account of the witness until this morning, and on yesterday afternoon, the defendant having closed its testimony and rested, the plaintiffs announced that they had no further testimony, and released their right and rights, and the court adjourned until this morning to hear argument upon the law of the case, and being necessary to submit the case to the jury on the evidence that had been
 216 concluded both by the plaintiff and the defendant, there never having been at any stage of the case until today an application for delay on account of the absence of the witness, and.

therefore, the defendant insists that the case be not re-opened at this time. The witnesses for the defendant are all excused, and it wouldn't be justice to the defendant now to re-open the case and introduce further testimony.

(Fitzgerald:) Are not all of the witnesses for the defendant here?

(Montgomery:) No sir.

(The Court:) Did he testify to anything with reference to the channel of the stream in '48?

(Montgomery:) The witnesses didn't testify to the channel of the stream of '48 but we don't know what he might be able to testify about the physical appearance there.

(The Court:) This morning at nine o'clock when court convened, the plaintiffs asked that the case be passed until a witness Lige Miller could be obtained, which the court refused to grant the plaintiff, and they had announced ready for trial. Since the witness Malone is not in the court room, and the court being of the opinion that no damage will be worked to either of the parties, will permit the introduction of this testimony.

To which the defendant excepts.

HARRY MALONE, a witness introduced for and on behalf of the plaintiff, having been first duly sworn, testified as follows, to-wit:

Q. What is your name?

A. Harry Malone my name.

Q. Where do you live Uncle Harry?

A. Down to Hill House.

Q. How long have you lived in this country?

A. Well, I lived here ever since we come here in '49.

Q. How old are you?

A. Born in '32.

Q. Do you know the country, Uncle Harry, in Horseshoe Bend?

A. Yes sir.

Q. And Miller's Bend, in there in the cut off?

217 A. Miller's Bend?

Q. No not Miller's Bend, Horseshoe Bend?

A. Yes sir.

Q. Did you ever live close to that land in there?

A. I know the land from Moon Lake, to Concordia on the river.

Q. Where is Concordia?

A. It is below, a way below.

Q. Below in this County?

A. It is in Boliver County.

Q. Where were you living in '49?

A. We come here in '49.

Q. Who did?

A. Goodloe Malone.

Q. And you, you were his slave?

A. Yes sir.

Q. Do you know the place now that is called Pecan Lake?

A. Yes sir, I remember a place called Pecan Lake.

Q. Do you remember when was the first year that you ever know that lake is in there, or that body in there?

A. '49,—'49,—'51, along about '51, when we come to the bottom, I was errand boy, I walked around the place always done traveling for doctor, or anything.

Q. What sort of place was this Pecan Lake, when you knew it?

(Montgomery:) We object to any questions with reference to the physical connection there, because it is direct testimony, and not in rebuttal, the plaintiff's case is to be made out on the proof of physical conditions, if made out at all, and the defendant's proof is addressed to meeting that case, and to go back and attempt to prove, and call it rebuttal by a witness, the observations that he made, and to track the same facts by direct testimony, and isn't in rebuttal at all, but part of the plaintiff's original case.

(The Court:) I overrule the objection.

Defendant excepts.

Q. What was that body, that lake in there, what was that body in there?

218 A. It was a cypress bottom, cypress knees, or something, a bottom.

Q. Now, between that cypress bottom and the Mississippi River, what if any land was there?

A. It was an island in there sir, a little island.

Q. How far was it across the cypress break?

A. To the river, Mississippi River.

Q. No, how wide was the cypress break in there at that time?

A. Two hundred yards, or more across the bottom.

Q. Do you know where Charlie McGhee, and aunt Ellen Jackson and all of those people live?

A. Yes sir.

Q. I am talking about that place is Section 11, T. 28, Range 5 West, you don't know that by sections?

A. No sir.

Q. But, you do know where those people live there?

A. Yes sir.

Q. Where was the cypress break with reference to where they live now, in front of the house or where?

A. I haven't been there seen it for ten years.

Q. Well, with reference to that land then, where was the cypress break?

A. To the left, passing down to the left.

Q. Now, when did that become a lake, that cypress break?

A. About '77, somewhere's along about that.

Q. Now, what caused it?

A. The levee broke down there and washed away, the levee broke, and all of the wash away made that cypress break.

Q. Went into that?

A. Yes sir.

Q. Did you ever go around this cypress break when steamboats were going around down through that bend?

A. Many a time.

Q. Could you or not see the steamboats across through there?

A. No sir couldn't see them.

219 Defendant objects and moves to exclude the answer.

Court sustains the objection.

Plaintiff excepts.

Q. Do you remember where Miller's wood yard was?

A. Yes sir.

Q. Did steamboats land there?

A. Yes sir, coming in there, had to go around the point and back a little and come into the wood yard.

Q. Where did they leave the wood there, where did they go?

A. Going above, they would come to the point.

Q. Suppose they were going south?

A. They didn't make any landing then in there, you remember, Doctor Vanguard, there was a tow in there, used to be called also Vanguard residence, he had a widow in there Doctor Vanguard.

Q. Taking from Miller's Point up in here on Section 7, when the boat landed there going this way, which direction did they go?

A. Went to the right going down.

Q. What was there between where the steamboats went and the Mississippi shore?

A. There was a little island in there.

Q. What made the island, if you know?

A. There was a gun boat sunk, a little fleet in there once, the Yankees and the men of '66 where you are speaking of.

Q. No, I am speaking of down in here front of Ellen Jackson and Charlie McGihee's, do you know what formed that island?

A. No sir, I don't, it was there when I came to the country.

Q. It was?

A. Yes sir.

Q. Now, when you came here, was the river running through there, or running in the channel that it is in now?

A. Running in the channel it is now when we came here in '49 this was Old River.

Q. Do you know anything of a plum orchard over in there?

220 A. Yes sir, I remember about the plum orchard.

Q. Now, with reference to that plum orchard, how close did the boats come to that plum orchard in going south, how far from it?

A. The Mississippi side here the plum orchard.

Q. No, do you remember a plum orchard on the Arkansas shore?

A. Yes sir.

Q. Now, this plum orchard on the Arkansas shore, how close did the boat channel come to it?

A. It was a bend there in the river.

Q. Yes I understand.

A. And I rode down on the boat several times, that you could see the plums on trees.

Q. Close enough to see the plums on the trees?

A. Yes sir, I seen plums on the trees, little woods and something like that, and trees were taller and could see the plums on trees.

Q. Did you know that land at that time where Pecan Lake, Old River, or Garner Lake, or whatever you call it, shown here as Pecan Lake, do you know where it is down on the river going south and west?

A. You mean Pecan Lake?

Q. Yes?

A. Yes sir.

Q. This, where you say this cypress break was washed out, where did it join back into the original stream, if you know?

A. The Fowler place, joined below the Fowler place.

Q. Do you know where Dustin Pond is now, what they call Dustin Pond?

A. I haven't been in there, it's been thirty years.

Q. Since you have been in there?

A. Yes sir, it has been thirty years.

Defendant renews the motion to exclude all of this evidence because it is original testimony.

Court overrules.

Defendant excepts.

221 Cross-examination:

Q. This plum orchard on the Arkansas shore, you mean before the cut off was made, you saw a plum orchard on the Arkansas shore?

A. Yes sir.

Q. You are not speaking of the plum orchard on the accretions south?

A. No sir, this plum orchard I am speaking of was thirty-eight or thirty-nine years old.

Q. There is some plum orchards on the main lands, south of the main land on the accretions?

A. South yes.

Q. All of these accretions coming down from the island up here, let me show you a larger map old man, now here's a larger map of the island itself and the cut off, there is the river as it is, the cut off, and here is the island, take the island and the accretions on that, the lands that we are squabbling over down here, all of this land was made, beginning about here, gradually coming down into there?

A. Inside of fifty years?

Q. Inside of fifty years.

A. Yes sir, inside of fifty years.

Plaintiff rests.

Defendant rests.

And this was all of the evidence introduced.

I, Y. E. Howell, Official Court Stenographer for the Eleventh Circuit Court District, State of Mississippi, do hereby certify that the foregoing pages contain a whole, true and correct transcript of my shorthand notes properly extended as the same were taken down by me on the trial of the case, styled in the caption of these notes, at the December, A. D. 1913 Term of the Circuit Court for the First District of Coahoma County, Mississippi.

Y. E. HOWELL.

222 Endorsed on said stenographer's notes is the filing thereof, which said filing is in words and figures as follows; to-wit: Filed this the 7th day of February, A. D. 1914.

J. E. MONTROY, *Clerk.*

223 *Notice to Stenographer.*

In the Circuit Court of the First District of Coahoma County, Mississippi.

ED JACKSON et al.

vs.

RUST LAND & LUMBER COMPANY.

To Y. E. Howell, Official Stenographer:

You are hereby notified that the defendant, the Rust Land & Lumber Company, in the above styled cause, has prayed an appeal of that case to the Supreme Court of the State of Mississippi from the judgment of the Circuit Court aforesaid, rendered therein against it and the copy of the stenographer's notes of the testimony introduced on the trial of the above case and of the proceedings of the said Court on the trial is desired by said defendant and you are requested to transcribe and file your said notes with the Clerk of said Court within the time required by statute so that the same will constitute a part of the record in said case on said appeal to the Supreme Court.

This the 11th day of December, 1913.

WILSON & ARMSTRONG,
MONTGOMERY & MONTGOMERY,
Attorneys for Defendant.

TUNICA, MISSISSIPPI, December 11th, 1913.

We certify that we have this day mailed to Y. E. Howell, Official Stenographer, the original of this notice.

MONTGOMERY & MONTGOMERY,
Attorneys for Defendant.

224 *Instructions Given by the Court for the Plaintiffs.*

ED JACKSON et al.

VS.

RUST LAND & LUMBER COMPANY.

The Court instructs the jury that they can in no event find that the lands from which the timber in controversy was cut are accretions to the Arkansas shore unless the defendant has satisfied them by a preponderance of the evidence that the said land lies north and east of what was the thread of the stream or channel of the Mississippi River at the time of the cut off in 1848, even though they believe from the evidence that the said tract of land is now connected with the Arkansas lands.

The Court instructs the jury that should they find from the evidence that the plaintiffs cut the timber in controversy in good faith by authority of King and Anderson, Charles McGhee, Ellen Anderson, who bona fide claimed the lands as accretions to sectional, T. 28, Range 5 West, in Coahoma County, Mississippi, and the defendant by force or intimidation took the timber away from them, then the plaintiffs have made out a prima facie case and it devolves upon the defendant to show, by a preponderance of the evidence that it is the owner of the land from which the timber was cut before defendant can recover in this case.

The court instructs the jury that unless the Rust Land Company has shown to the satisfaction of the jury, by a preponderance of the evidence, that the lands from which the timber in controversy was cut was a part of the accretions to the land belonging to the Rust Land Company in the State of Arkansas, or was north and east of a channel of the Mississippi River where the cut off 1848 occurred, then they will find for the plaintiffs.

225 The Court instructs the jury that in case they find for the plaintiffs, the form of their verdict shall be as follows, to-wit: We the jury find for the plaintiffs and assess the value of the property levied on at \$— (Filling in the blank with the amount of damages which they may find from the evidence to be the value of the property in controversy.

226 *Instructions Given by the Court for the Defendant.*

ED JACKSON et al.

VS.

RUST LAND & LUMBER COMPANY.

The Court instructs the jury for the defendant that if they believe from the evidence that — 1848 the Mississippi River made a cut off

on the Arkansas side, across Horseshoe Bend, leaving an island on the eastern or southern side of the river with the river between it and the Arkansas shore; that the island itself still continued to be and remain in the State of Arkansas, notwithstanding the cut off, and all land that formed to this island by accretions thereto, that is by the gradual and imperceptible formation behind the receding water became and was a part of the said island and still is; and if the jury believe from the evidence that the accretions forming from the island and attached thereto continually form to the south or southeast, around what is known as Dustin Pond, and between it and what is known as Pecan Lake or Old River, and that in this way was formed the land on which was grown the timber which was cut by the plaintiffs and is the subject of this litigation, then the jury will find for the defendant.

The Court instructs the jury for the defendant that it is the law that where the Mississippi River recedes slowly and imperceptibly from the land of a riparian owner and the land before covered with water is left dry such land belongs to the riparian owner from whose shores the water recedes, and if the jury believe from the evidence that the land on which was growing the timber in controversy in this suit, which was thus formed by the water receding from the direction of Horseshoe Island, and became thereby attached to the accretions theretofore formed and attached to the said island, then the jury are instructed that both the land and timber belong to the Rust Land & Lumber Company and the jury will find for the defendant.

227 The Court instructs the jury for the defendant that if they believe from the evidence that the body of water shown on the maps introduced in evidence in this case, and called Old River or Pecan Lake is between the Mississippi shore and the land on which the timber in controversy in this suit was growing, and that this body of water was the last channel of the river as it dried up between the island and the shore of Mississippi, and that the said lands on which the said timber was growing, is not attached to the Mississippi shore or any accretions formed or attached thereto, then the jury will find for the defendant.

The court instructs the jury for the defendant that even though they may believe from the evidence that the body of water mentioned in the maps and evidence in this case as Dustin Pond is a part of the old bed of the river, yet if they further believe from the evidence that the land south of it on which the timber was grown which is in controversy in this suit, is entirely separated from the Mississippi shore or any accretions thereto by a body of water approximately three hundred yards wide and very deep, to-wit: From eight to nineteen feet deep at its deepest, which body of water is known as Pecan Lake or Old River, having high banks on the Mississippi side and low sloping banks on the opposite side, and that the said land has never been attached to the Mississippi shore or any of the accretions thereto, but is a part of the accretions coming down from what is known as Horseshoe Island, then the jury are instructed that the said land is a part of the island and the

timber thereon was and is the property of the defendant and the jury will find for the defendant.

228 *Instructions Asked for by the Plaintiffs and Refused.*

ED JACKSON et al.

VS.

RUST LAND & LUMBER COMPANY.

By the Court:

The Court instructs the jury that if they believe from a preponderance of the evidence that King and Anderson, Charles McGhee, Ellen Jackson and Joe Williams had been in actual, open, notorious and adverse possession of the land from which the timber in controversy was cut for a continuous period of ten years or more, claiming the exclusive ownership thereof, then and in that event the jury will find for the plaintiffs.

Instructions Asked for by the Defendant and Refused.

ED JACKSON et al.

VS.

RUST LAND & LUMBER COMPANY.

By the Court:

The Court instructs the jury to find for the defendant.

The Court further instructs the jury for the defendant that in considering and determining the question as to whether or not the land from which the timber in controversy in this cause was cut the jury may consider and should consider, in connection with all of the facts and circumstances in this case, the following facts, if in proof, to-wit:

1. The opinions of the surveyors and civil engineers who have surveyed and examined the lands in question, and who are competent, to give such opinions with reference to the nature of the formation of the said lands.

2. The fact, if in proof, that a body of water three hundred yards wide divides it from the shore of Mississippi, or the original bank of the Mississippi River on the Mississippi side as it existed at the time of the cut off of 1848 as made by the river at Horseshoe Lake.

3. The fact, if the jury believe from the evidence that it is a fact, that this body of water is deeper on the Mississippi side than on the Arkansas side, that the deepest water extends from a short distance north of the old Mississippi shore about one-third of the

way across the lake or Old River, and from there north the remaining two-thirds of the way continues to grow more shallow until it reaches, at a very shallow depth, the sloping northern bank with very little bank to show.

4. The fact, if in proof, that the timber on the accretions between the said Horseshoe Island and the land where the timber was cut grows perceptibly smaller the further from the island towards the south that it is examined and that the timber is of later growth if the jury believe from the evidence that it is, on the land from which the timber in controversy was cut then it is on the land further north and northeast in the direction of the island.

5. The fact, if in proof, that the lands from which the timber in controversy in this suit was cut, is attached to and part of the accretions coming down from the island to it, and is at no point attached to or connected with the Mississippi shore or any accretion thereto; all these facts and circumstances, if the jury believe them to be true from the evidence, together with all other facts and circumstances in this case, the jury may consider in determining the question now before them, as to whether the lands from which the timber in controversy was cut is as an accretion a part of the lands of the defendant, and if from these facts and circumstances, and all of the other facts and circumstances in proof in this case the jury believe that the lands from which the timber in controversy in this suit was cut is a part of the accretions to the lands of the defendant, then the jury will find for the defendant.

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ED JACKSON et al.

vs.

RUST LAND & LUMBER COMPANY.

The court further instructs the jury for the defendant that the plaintiffs in this case can in no event recover in this case for the timber in controversy unless the proof shows by a preponderance of the evidence that the timber was cut growing on the lands belonging to the grantors of these plaintiffs, or some of them, and even though the jury should believe from the evidence that there were two bodies of water between Horseshoe Island and the Mississippi shore which should be properly denominated Old River, that is to say, Dustin Pond and Pecan Lake, and that the land on which the timber was growing was between those two, still the plaintiff could not recover in this case unless the evidence affirmatively shows by a clear preponderance thereof, that the said land is an accretion to the Mississippi shore, belonging to the grantors of this plaintiff.

231

Judgment of the Court.

#140.

ED JACKSON et al.

vs.

RUST LAND & LUMBER COMPANY.

This cause coming on this day to be heard and the plaintiffs and defendants both appearing in open court, when came a jury of good and lawful men of the regular venire for the week composed of Charles S. Palmore and eleven others, who having heard the evidence in the case and received the instructions of the court and heard the argument of counsel, retired to consider their verdict and returned into open court the following verdict in words and figures, to-wit: "We the jury find for the plaintiffs and assess the value of the property levied on at \$3,600.00, and it appearing to the court that the defendant, the Rust Land & Lumber Company, a corporation, organized under the laws of the State of Wisconsin, gave bond herein with the United States Fidelity and Guaranty Company, of Baltimore, Md., as sureties thereon and have taken possession of said property. It is therefore ordered and considered by the court that the defendant restore to the plaintiffs, Ed Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isom White, the property levied on herein and in default thereof that said plaintiffs do have and recover of the defendant the Rust Land & Lumber Company and the United States Fidelity and Guaranty Company, of Baltimore, Md., the sureties on their bond the sum of Thirty Six Hundred Dollars (\$3,600.00) and all costs in this behalf expended for which execution may issue.

Ordered and considered this December 3d, 1913.

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Motion for a New Trial.

In Circuit Court, December Term, 1913.

STATE OF MISSISSIPPI,
Coahoma County:

ED JACKSON et al.

vs.

RUST LAND & LUMBER COMPANY.

Now comes the said defendant, by its attorney and moves the court to set aside the verdict of the jury and judgment of the court herein rendered against it at this term of the court and grant it a new trial herein and for causes of this motion says:

1. The Court erred in giving the first instruction for the plaintiff.
2. The Court erred in giving the second instruction for the plaintiff.
3. The court erred in giving the third instruction for the plaintiff.
4. The court erred in giving the fourth instruction for the plaintiff.
5. The court erred in giving the fifth instruction for the plaintiff.
6. The court erred in refusing the instruction asked for by the defendant, being instruction number one;
7. The Court erred in refusing instruction number six asked for by the defendant.
8. The court erred in refusing instruction number seven asked for by the defendant.
9. The verdict of the jury assessing the value of the logs in controversy in this cause is excessive according to the evidence;
10. The verdict of the jury is contrary to law.
11. The verdict of the jury is contrary to the evidence.
12. The verdict of the jury is contrary to the great preponderance of the evidence.

233 13. The court erred in permitting the plaintiff to introduce in rebuttal the witness, Miller, and in overruling the objection of the defendant to his testimony as not in rebuttal; and in overruling the motion of the defendant to exclude the said testimony on the ground that it was not in rebuttal; and because the witness could only be introduced on the direct examination of the plaintiff's witnesses in chief.

14. And for other causes to be assigned at the hearing.

Wherefore the defendant moves the court to set aside the verdict of the jury and the judgment of the court thereon, and to grant it a new trial herein.

MONTGOMERY & MONTGOMERY,
WILSON & ARMSTRONG,
Defendant's Attorneys.

Filed December 3d, 1913.

J. E. MONTROY, *Clerk*,
J. R. ALCORN, *D. C.*

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Order Overruling Motion.

#140.

ED JACKSON et al

vs.

RUST LAND & LUMBER COMPANY.

This day came the parties by attorney and came on for hearing the motion of the defendant to set aside the verdict of the jury and the judgment of the court herein rendered against it at the present

term of this court and the court having heard said motion, it is considered by the court that the same be and is hereby overruled and to this action by the court the defendant then and there excepted and is allowed sixty days in which to present a bill of exceptions as of this term, and the official stenographer is allowed 90 days within which to file a transcript of his notes in this cause herein.

235 STATE OF MISSISSIPPI,
 County of Coahoma:

Know all men by these presents, that we, Rust Land & Lumber Company, principal, and United Casualty & Sureties Company, sureties, are held and firmly bound unto Ed Jackson et al. in the sum of Seventy Two Hundred Dollars (\$7,200.00) for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands and delivered this the — day of —
A. D. 1914.

The condition of this obligation is, That, whereas, a judgment was rendered by the Circuit Court of the County of Coahoma, in said State, on the — day of December, A. D. 1913 at the December Term A. D. 1913, thereof, in Case No. — in said Court, against Rust Land & Lumber Company in favor of Ed. Jackson et al. for Seventy Two Hundred (\$7,200.00) Dollars.

Now, if said Rust Land & Lumber Company principal obligor herein and appellant, will satisfy the said judgment, and such final judgment as may be made in said cause, and all costs, if the said judgment of said Circuit Court be affirmed by the Supreme Court of the State of Mississippi, to which Court an appeal from said judgment of said Circuit Court is to be prosecuted, then this obligation shall be void.

RUST LAND & LUMBER COMPANY,
By M. B. GOPER, *As't Sec'y & Treas.*
UNITED CASUALTY & SURETY CO.,
By J. J. GOODMAN, *Sec'y & Treas.*

Attest:

C. E. PARNELL,
Att'y in Fact.

The above bond is approved and filed this the 4th day of March
A. D. 1914.

J. E. MONTROY,
Circuit Clerk,
By J. R. ALCORN, *D. C.*

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Clerk's Certificate.

STATE OF MISSISSIPPI,
County of Coahoma:

I, J. E. Montroy, Circuit Court Clerk within and for the County of Coahoma, in said State, do hereby certify that the foregoing pages is a true and correct copy of all the proceedings had and done in the case, lately pending in said court, styled Ed. Jackson et al. vs. #140, Rust Land & Lumber Company, as the same now appears of record in my office at Friars Point, Mississippi.

Given under my hand and official seal on this the 8th day of April, 1914.

J. E. MONTROY, *Clerk.*
J. R. ALCORN, *D. C.*

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In the Supreme Court of Mississippi.

#17835.

RUST LAND & LUMBER Co., Appellant,

vs.

Ed JACKSON et al., Appellees.

Assignment of Errors.

Now comes Rust Land & Lumber Company, appellant, in the above numbered and entitled case, and assigns the following errors, which appellant avers occurred on the trial thereof, and upon which it relies to reverse the judgment entered herein, as part of the record.

First Assignment of Error.

There is no evidence to support the verdict, and the verdict is contrary to the law (Transcript pp. 8-22).

Second Assignment of Error.

The verdict is contrary to the evidence (Transcript, pp. 8-22).

Third Assignment of Error.

The court erred in refusing to admit into evidence, and excluding the map offered on behalf of the defendant, which map is marked Exhibit No. 27 to the bill of exceptions (Transcript, pp. 168, 169).

Fourth Assignment of Error.

The Court erred in permitting the plaintiff to introduce in rebuttal the witness Harry Malone, and in overruling the objection of the defendant to his testimony as not in rebuttal, and in overruling the motion of the defendant to exclude the said testimony, on the ground that it was not in rebuttal, and because the witness could only be introduced on the direct examination of the plaintiff's witness in chief (Tr., pp. 214, 215, 216-221).

Fifth Assignment of Error.

The Court erred in instructing the jury as follows:

238 "The court instructs the jury that they can in no event find that the lands from which the timber in controversy was cut or accretions to the Arkansas shore unless the defendant has satisfied them by a preponderance of the evidence that the said land lies north and east of what was the thread of the stream or channel of the Mississippi River at the time of the cut off in 1848, even though they believe from the evidence that the said track of land is now connected with the Arkansas lands."
(Tr. pp. 224.)

Sixth Assignment of Error.

The Court erred in instructing the jury as follows:

"The Court instructs the jury that they should find from the evidence that the plaintiffs cut the timber in controversy in good faith by authority of King and Anderson, Charles McGhee, Ellen Jackson, who bona fide claimed the lands as accretions to Section 11, T. 28, Range 5 West, in Coahoma County, Mississippi, and the defendant by force or intimidation took the timber away from them, then the plaintiffs have made out a prima facie case and it devolves upon the defendant to show, by the preponderance of the evidence that it is the owner of the land from which the timber was cut before defendant can recover in this case."

(Tr. p. 224.)

Seventh Assignment of Error.

The Court erred in instructing the jury as follows:

"The court instructs the jury that unless the Rust Land Company has shown to the satisfaction of the jury, by a preponderance of the evidence that the lands from which the timber in controversy was cut was a part of the accretions to the land belonging to the Rust Land Company in the State of Arkansas, or was north and east of the channel of the Mississippi River where the cut off 1848 occurred, then they will find for the plaintiffs."

(Tr. p. 224.)

Eighth Assignment of Error.

The court erred in refusing the following special instruction requested by the defendant:

"The court instructs the jury to find for the defendant."
(Tr. p. 228.)

Ninth Assignment of Error.

The court erred in refusing the following special instruction requested by the defendant:

"The court further instructs the jury for the defendant that in considering and determining the question as to whether or not the land from which the timber in controversy in this cause was cut the jury may consider and should consider, in connection with all of the facts and circumstances in this case, the following facts, if in proof, to-wit:

1. The opinions of the surveyors and civil engineers who have surveyed and examined the lands in question, and who are competent, if the jury believe they are competent, to give such opinions with reference to the nature of the formation of the said lands.

2. The fact, if in proof, that a body of water three hundred yards wide divides it from the shore of Mississippi, or the original bank of the Mississippi River on the Mississippi side as it existed at the time of the cut off of 1848 as made by the river at Horseshoe Lake.

3. The fact, if the jury believe from the evidence that it is a fact, that this body of water is deeper on the Mississippi side than on the Arkansas side, that the deepest water extends from a short distance north of the old Mississippi shore about one-third of the way across the lake or Old River, and from there north the remaining two-thirds of the way continues to grow more shallow until it reaches, at a very shallow depth, the sloping northern bank with very little bank to show.

4. The fact, if in proof, that the timber on the accretions between the said Horseshoe Island and the land where the timber was cut grows perceptibly smaller the further from the island toward
240 the south that it is examined and that the timber is of later growth if the jury believe from the evidence that it is, on the land from which the timber in controversy was cut then it is on the land further north and northeast in the direction of the island.

5. The fact, if in proof, that the lands from which the timber in controversy in this suit was cut, is attached to and part of the accretions coming down from the island to it, and is at no point attached to or connected with the Mississippi shore or any accretions thereto; that these facts and circumstances, if the jury believe them to be true from the evidence, together with all other facts and circumstances in this case, the jury may consider it determining the question now before them, as to whether the lands from which the timber in controversy was cut is as an accretion a part of the lands of the defendant, and if from these facts and circumstances and all

of the other facts and circumstances in proof in this case the jury believe that the lands from which the timber in controversy in this suit was cut is a part of the accretions to the lands of the defendant, then the jury will find for the defendant."
(Tr. P. 228.)

Tenth Assignment of Error.

The court erred in refusing the following special instruction requested by the defendant:

"The court further instructs the jury for the defendant that the plaintiffs in this case can in no event recover in this case for the timber in controversy unless the proof shows by a preponderance of the evidence that the timber was cut growing on the lands belonging to the grabtors of these plaintiffs, or some of them, and even though the jury should believe from the evidence that there were two bodies of water between Horseshoe Island and the Mississippi shore which should properly — denominated Old River, that is to say, Dustin Pond and Pecan Lake, and that the
241 & 242 land on which the timber was growing was between those two, still the plaintiff could not recover in this case unless the evidence affirmatively shows by a clear preponderance thereof, that the said land is an accretion to the Mississippi shore, belonging to the grantors of this plaintiff."

Eleventh Assignment of Error.

The verdict is excessive. (Tr. pp. 74, 75, 231.)

Twelfth Assignment of Error.

The court erred in overruling appellant, Rust Land & Lumber Company's motion for a new trial, and especially in overruling those grounds of same which are identical with the foregoing assignments of error. (Tr. pp. 232, 233, 234.)

Wherefore, appellant, Rust Land & Lumber Company prays that the judgment of the Circuit Court of Coahoma County be reversed.

WILSON & ARMSTRONG,
MONTGOMERY & MONTGOMERY,
Att'ys for Appellant, Rust Land & Lumber Company.

We Wilson & Armstrong, Attorneys of Record for appellant, Rust Land & Lumber Company hereby certify that we have this day mailed, postage prepaid, to Maynard & Fitzgerald, Attorneys of Record for Appellees, Ed. Jackson et al., to their post-office address at Clarksdale, Mississippi, a copy of the foregoing assignment of errors.

March 24th, 1915.

WILSON & ARMSTRONG,
Att'ys for Appel-ant, Rust Land & Lumber Company.

Received and Filed March 25, 1915.

GEO. C. MYERS, *Clerk*,

By W. J. BROWN, *D. C.*

242½ Supreme Court of Mississippi, October Term, 1916, Saturday, December 23rd, 1916.

17835.

RUST LAND & LUMBER COMPANY

vs.

ED JACKSON et al.

This cause having been submitted on a former day of this term on the record herein from the Circuit Court of Coahoma County, 1st District, and this Court having sufficiently examined and considered the same and being of opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the December term 1913, on the 3rd day of December, 1913, be and the same is hereby affirmed, and that appellees do have and recover of appellant and the United States Casualty Company, surety in the supersedeas bond the sum of thirty six hundred dollars, the amount of the judgment in the court below, together with the further sum of one hundred and eighty dollars, being damages at the rate of five per centum as allowed by law, as well as interest on the amount of said judgment from date of rendition till paid at the rate of six per centum per annum, and also the costs of this cause in this Court and in the court below to be taxed &c.

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In the Supreme Court of Mississippi.

RUST LAND & LUMBER COMPANY, Appellant,

vs.

ED JACKSON et al., Appellees.

Motion of Appellant for Rehearing and Written Opinion and Brief in Support of Same.

To the Honorables the Presiding Justice and the Associate Justices of Division B of the Supreme Court of Mississippi:

Now comes the appellant, Rust Land & Lumber Company and moves the court to grant a rehearing and file a written opinion in this cause, giving it- reasons for its decisions.

The grounds of this motion are as follows:

In this cause a judgment for Thirty Six Hundred Dollars against

appellant was on Saturday, December 23d, 1916, affirmed without any opinion.

Appellant has no knowledge or information of the reason of this action upon the part of the Court, except the statement of the public prints. The Commercial Appeal of December 26th, said:

"Another decision of some interest decided by Justice Potter was Rust Land & Lumber Company vs. Ed. Jackson et al. in the decision of this case was involved the question of boundary between riparian Mississippi and riparian Arkansas. Some timber had been cut on a tract of land which had been affected by one of the various escapades of the Mississippi River, and it was claimed had been formerly a part of Arkansas located near Friars point. The court had gone very carefully into the matter and had found that the best authenticated authorities upheld the contention of the appellants that the boundary is determined by the thread or bed of the stream and a study of the record here indicated that, regardless of the former location or jurisdiction, the present thread of the
244 Mississippi at the point in dispute put it squarely in Mississippi; that the finding of the lower court was correct and would stand affirmed."

A copy of the above report is hereto attached.

The failure of this Honorable Court to file, or write an opinion in this cause has inadvertently worked a great hardship upon this appellant for the following reasons:

First.

There are now pending between this appellant and various persons in addition to this cause, two other suits involving timber cut from lands situated in what was Horseshoe Bend, the same locus in quo involved in this suit, whether the decision of the Court in this case is decisive or affects either of those cases depends upon what this court decided in this case. It seems to this appellant a great hardship to compel it again to thread the thorny path of litigation in order to ascertain the views of this Court upon questions and squarely and unequivocally presented to it in this cause. To fail to state to appellant the reason why it has been turned away, when it had other cases which may be affected by this decision is, it seems, inconsistent with the principle that public policy demands an end of litigation.

Second.

The locus in quo in this case, Horseshoe Island, is a tract of approximately three or four thousand acres' worth, with the timber upon it, is worth Fifty Thousand Dollars. Yet questions involving this valuable property and vital to appellant are decided without any statement of what was decided, or why, the appellant after having submitted itself to the jurisdiction of the State Courts and litigated issues with a view of having determined what right it has to this property is left in the anomalous position of not having and not being able to ascertain even after it has litigated the question,

245 whether it has *any* right, and if so what, to this valuable property.

Third.

According to the statement of the public prints, the only source of information open to appellant, this Honorable Court decided that the present location of the thread of the Mississippi River controlled in determining the boundary between Arkansas and Mississippi, holding that "a study of the record here indicated that regardless of the former location, and jurisdiction, the present thread of the Mississippi at the point in dispute put it squarely in Mississippi" (Memphis Commercial Appeal, December 26th, 1916, quoted *supra*). Such a holding is to your appellant surprising. The change of the Mississippi River was concededly caused by an avulsion which occurred in 1848 and your appellant is advised that such an avulsion does not change the boundary lines between states and that, unless this Honorable Court so held, no Court has anywhere and at any time ever held otherwise, but that the rule that such an avulsion does not change the boundary is definitely settled by the Supreme Court of the United States, the only tribunal having jurisdiction authoritatively to pass upon such a question.

St. Louis vs. Rutz, 138 U. S. 226, 245;

Nebraska vs. Iowa, 143 U. S. 359;

Missouri vs. Nebraska, 196 U. S. 23;

Rees vs. McDaniel, 115 Mo. 145;

Rober vs. Michelson (Neb. 116, N. W. R. 949).

Fowler vs. Wood (Kan.) 85 Pac. 763, 6 L. R. A. N. S. 162;

Lynch vs. Allen (N. C.), 4 Dev. & Dat. 62;

Coulthard vs. McIntosh, 143 Ia. 389, 112 N. W. R. 233;

Missouri vs. Kansas (213 U. S. 78);

Vouvier vs. Stricklett, 40 Neb. 793;

State vs. Bowen, 149 Wis. 203, 39 L. R. A. N. S. 200;

Deloney vs. State, 88 Ark. 311;

Nix vs. Phifer, 73 Ark. 199;

Wallace vs. Driver, 61 Ark. 429;

Railway Co. vs. Ramsey, 53 Ark. 314;

Moss vs. Gibbs, 57 Tenn. (10 Heisk 283);

Cooley vs. Golden, 57 Mo. App. 229;

Angell on Water Courses (79th Ed.) Art. 57.

246 If this court did so hold, appellant desires to know the exact holding in order to present the question to the Supreme Court of the United States.

Fourth.

The real controversy involved in this cause is the bound-ry between Arkansas and Mississippi and to this controversy states of Arkansas and Mississippi are interested parties no less than are the appellant and appellees and are even now litigating the question in the Su-

preme Court of the United States. In view of this, your appellant is confident that this Honorable Court, a court constituted under the Constitution and Laws of the State of Mississippi, will seek with meticulous care to place appellant in that position which will best enable us to prevent its claims to the Supreme Court of the United States.

That in fixing a bound-ry line between two states, when the matter is sharply in issue between those states or between one of the states and a party claiming by virtue of his citizenship in another state and deriving title from such other state, a federal question arises and that the Supreme Court of the United States has exclusive jurisdiction for the settlement of that question seems to be plain.

In *Florida vs. Georgia*, 17 How., 478, it was said, on application of the Attorney General to be heard on behalf of the United States in the suit then pending between Florida and Georgia.

"In a case like the one now before us, there is no necessity for a judgment against the United States. For when the bound-ry in question shall be ascertained and determined by the judgment of the court, in the present suit, there is no possible mode by which that decision can be reviewed or reexamined at the instance of the United States. They will therefore be as effectually concluded by the judgment as if they were parties on the record, and a judgment entered against them."

And further:

"But under our Government, a bound-ry between two states
247 may become a judicial question to be decided in this court.

And, when it assumes that form, the assent or dissent of the United States can not influence the decision. The question is to be decided upon the evidence adduced to the court, and that decision, when pronounced, is conclusive upon the United States, as well as upon the states that are parties to the suit."

In other words, the Supreme Court of the United States is the only forum in which determinated question involved can be settled and a case of which the Supreme Court of the United States has exclusive jurisdiction so it is clearly a case which presents a Federal question.

It is therefore essential in order for appellant to present its case to the Supreme Court of the United States for it to know what was decided in order that it may ascertain to what extent the question of the bound-ry between the states was considered adjudicated. That this court will thus accord to it the opportunity to have its day in court, this appellant can not doubt.

The question of whether the Supreme Court of the United States has jurisdiction on writ of error to a State Supreme Court of a suit between individuals or a State and citizen of another state involving the bound-ry line between states is even now before the Supreme Court of the United States. This is a case of *W. A. Cissna vs. State of Tennessee* No. 89, October Term, 1916. This case grew out of centennial cut off an avulsion caused by the Mississippi River changing its course between Arkansas and Tennessee north of Memphis. The State

of Tennessee sued Cisna in a Tennessee Court for the value of timber cut on the lands affected by the avulsion and removed a judgment which was affirmed by the Supreme Court of Tennessee. Pending this litigation, the State of Arkansas filed a suit in the Supreme Court

of the United States against the State of Tennessee in order to determine the bound-ry between the states at the same point.

After the decision of the Supreme Court of Tennessee, Cisna removed his case to the Supreme Court of the United States by a writ of error on the ground the bound-ry between the states was involved. On December 11th, 1916, the Supreme Court of the United States rendered an opinion in *Cisna vs. Tennessee* (the case of *Arkansas vs. Tennessee* being not ready for hearing) and said:

"At the threshold jurisdiction to review the judgment thus rendered is denied on the ground that no Federal question arises for decision.

"It is conceded in argument by both parties that the decision of the merits of this case will necessarily be the equivalent of a decision of a bound-ry suit pending on our original calendar between the two states that an affirmance of the money judgment below, will in substance, will be an award for virtually the entire avails of the land in suit in this case as well as of the greater part, if not all, of the lands to be affected in the bound-ry suit. Moreover, in substance it is not disputed that the facts here presented are identical with those upon which the solution of the bound-ry suit must depend. Under these conditions we think, without intimating an opinion on the question of jurisdiction raised in this case or on the merits, that we ought not to consider and pass upon this case without at the same time considering and passing upon the controversy concerning the bound-ry between the two states now pending on our docket. The identity of the two issues, the possible influence which the decision of the one would have on the rights pending in the other and the fact that the actor, State of Tennessee, in this suit is the defendant in the original suit, we think rendered that conclusion necessary.

"For these reasons we direct that this case be restored to the docket and that it be hereafter assigned for hearing at the same time and immediately after the coming on for hearing of the original bound-ry suit between the two states."

A copy of this opinion is attached to this motion.

It will thus be seen that the Supreme Court of the United States is of the opinion that even it should not decide a case involving the bound-ry line between two states before deciding the suit between the states about the same bound-ry.

Appellant is advised that the Justice to whom the record in this case was assigned is no longer a member of this Court. For that reason he could not now prepare an opinion in this case. Appellant therefore moves for a rehearing of the case so that it may be presented to the court as now constituted and the record be re-assigned to some member of the Court for the preparation of an opinion.

Respectfully submitted,

WILSON & ARMSTRONG,
Attorneys for Appellant.

We, Wilson & Armstrong, Attorneys for Appellant, hereby certify that we have this day mailed, postage prepaid, to Attorneys for Appellees, at their postoffice addresses, to Green & Green, Jackson, Miss., and Maynard & Fitzgerald, Clarksdale, Miss., copy of the above motion and brief in support of same.

Memphis, Tennessee, January 1st, 1917.

WILSON & ARMSTRONG,
*Attorneys for Appellant, Rust Land &
Lumber Company.*
WILSON & ARMSTRONG,

250 Supreme Court of the United States, October Term, 1916.

No. 89.

W. A. CISSNA, Plaintiff in Error,

vs.

THE STATE OF TENNESSEE.

In Error to the Supreme Court of the State of Tennessee.

DECEMBER 11, 1916.

Mr. Chief Justice WHITE delivered the opinion of the Court.

As owner and trust- for the people of the state of certain described lands, the state of Tennessee in a State Court commenced this action in 1903, against Cissna and others to recover and to restrain cutting timber thereon and for an accounting for timber already cut. A temporary injunction was granted against removing and cutting timber, which was modified by permitting, on the giving of a bond, the removal of timber already cut, and was subsequently again modified by allowing all the timber on the land to be cut and removed on the giving of additional bond. By pleas in abatement and answers the jurisdiction of the court was denied on the ground that the land was not in Tennessee, but in Arkansas and this was sustained and the suit dismissed for want of jurisdiction. The Supreme Court of the State, however, reversed this action and remanded the case for trial on the merits. 119 Tennessee, 47.

Pleadings were amended in the trial court and while the case was there undetermined the State of Arkansas filed in this Court its complaint against Tennessee to settle the boundary line between the two. The bill made reference to the suit pending in Tennessee and alleged that the land- embraced by that suit were in Arkansas subject to a sovereignty and denied the power of the State of Tennessee in its own courts to interfere with the lawful authority of the State of Arkansas. Thereafter the existence of the suit in this
251 court was alleged in the State Court and that court was asked to suspend proceedings until the decision in the bound-ry case. This was denied and a judgment was entered in favor of the

State of Tennessee, holding that the lands were in Tennessee and belonged to that State and this judgment was subsequently affirmed by the Supreme Court of the State. In that Court also the pendency of the original suit between the two states in this court was specially set up an application for suspension based on the fact was prayed but was refused. The judgment of the Supreme Court of the State not only decreed the lands to belong to the State of Tennessee in its sovereign capacity on the ground that they were situated in that State, but gave a recovery for the amount of timber cut before bringing of the suit and also for the money value of the balance of the timber on the land which had been cut and removed as the result of the modification of the injunction permitting that to be done.

At the threshold jurisdiction to review the judgment thus rendered is denied on the ground that no Federal question arises for decision.

It is conceded in argument by both parties that the decision of the merits of this case will necessarily be equivalent of a decision of the boundary suit pending on our original calendar between the two States and that an affirmance of the money judgment below will in substance be an award for virtually the entire avails of the land in suit in this case as well as of the greater part, if not all, of the lands to be affected in the boundary suit. Moreover, in substance it is not disputed that the facts here presented are identical with those upon which the solution of the boundary suit must depend. Under these conditions we think, without intimating an opinion on the question of jurisdiction raised in this case or on the merits that we ought not to consider and pass upon this case without at the same time considering and passing upon the controversy concerning the boundary between the two States, now pending on our docket.

252 The identity of the two issues, the possible influence which the decision of the one would have on the rights pending in the other and the fact that the actor, State of Tennessee, in this suit is the defendant in the original suit, we think renders that conclusion necessary.

For these reasons we direct that this case be restored to the docket and that it be hereafter assigned for hearing at the same time and immediately after the coming on for hearing of the original boundary suit between the two states and to that end that that hearing be expedited, we say in addition, first, that if the facts in the boundary case be stipulated by the parties either by reference to the facts shown in this case or otherwise, both the cases will be taken on submission on printed briefs if the parties are so advised, or second, if they are not so advised, upon an agreement and stipulation as to the facts in the boundary case, that case and this will be ordered advanced and assigned for oral argument at an early day.

And it is so ordered.

Chief Justice of the Supreme Court of the United States.

A true copy:

Test.

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17835.

RUST LAND & LUMBER CO.

VS.

ED JACKSON et al.

Comes Rust Land & Lumber Company, appellant, and moves the Court to continue this case and stay the trial thereof until a certain cause pending in the Supreme Court of the United States, No. 6 Original, on the docket thereof, styled State of Arkansas vs. State of Mississippi, is determined by that tribunal, and for cause of said motion shows as follows.

The issue in controversy in this case is the boundary lines between the State of Arkansas and the State of Mississippi, the appellees claiming under a grant from the State of Mississippi and the appellant claiming under a grant from the State of Arkansas. So that, the real question involved in this case, determinative of the rights of the parties, is the true boundary line between the said States at the place from which the timber involved in this suit was cut.

There is pending in the Supreme Court of the United States, and ready for the taking of testimony therein, said cause between the States of Arkansas and Mississippi, which involves only the true boundary line between said states at the very point in controversy in this suit, so that, a determination of the boundary line by the Supreme Court of the United States, which has the final jurisdiction thereof, will determine the boundary line between said States, and whether the land involved is in the said State of Arkansas, as claimed by appellant, or in the State of Mississippi, as claimed by appellees is the basis of contention in this case.

Motion sustained and cause continued.

254 Wherefore appellants move the Court to stay the trial of this action until the determination of said boundary at the very point in controversy in this case, until such determination by the Supreme Court of the United States has been made.

In support of said motion, appellants file herewith a copy of the original bill in the Supreme Court of the United States, and a copy of the motion for the appointment of a commissioner and a stipulation for the taking of proof therein.

WILSON & ARMSTRONG,
For Motion.

I, Julian C. Wilson, of counsel for appellant, do certify that I have mailed a copy of the above motion this day, postage prepaid, to Maynard & Fitzgerald, solicitors for appellees.

This March 4th 1916.

JULIAN C. WILSON.

Filed March 6th 1916.

GEO. C. MYERS, *Clerk.*

RUST LAND & LUMBER CO.

v.

ED JACKSON et al.

MONDAY, January 8th, 1917.

This cause coming on to be heard on the motion for rehearing and for written opinion, and this Court having sufficiently considered the same doth order and adjudge that said motion be and the same is hereby overruled.

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RUST LAND & LUMBER CO.

vs.

ED JACKSON et al.

Now comes the appellees herein and move the Court to set aside the continuance heretofore granted upon the 11th day of March 1916, on motion, no notice having been received of said motion by counsel for appellees before the same was sustained, because—

1. The decision of the Supreme Court of the United States will not be controlling in this case, as it may not be rendered, and will not be rendered, upon the same testimony produced in the same way, and the rights of the parties in this particular case are to be determined by the record as made and not by what may be developed at another time and under different circumstances.

2. There is no way known to the law by which said judgment in the Supreme Court of the United States can be in any way introduced into this Court which is only a Court of errors and appeals without any original jurisdiction, and its sole right in the premises is to affirm or reverse any decision made by the Circuit Court in accordance with whether or not said Circuit Court, upon the evidence before it, reached the correct conclusion.

3. Because this Court is not in any way subject to the final jurisdiction of the Supreme Court of the United States, but on the contrary, as to the question herein involved, that is to say, the rights of the parties to the timber growing in what was formerly the Mississippi river, the Supreme Court of the United States follows the decisions of the States and does not overrule them.

And for other grounds to be assigned at the hearing.

MAYNARD & FITZGERALD,
GREEN & GREEN,

Att'ys for Appellees.

We hereby certify that we have this day mailed Messrs. Wilson & Armstrong, Memphis, Tennessee, Bank of Commerce & Trust

Building and to Messrs. Montgomery & Montgomery, Tunica, Mississippi, a copy of the foregoing motion.

MAYNARD & FITZGERALD,
GREEN & GREEN,

Att'ys for Appellees.

Filed April 7th 1916.

GEO. C. MYERS, *Clerk.*

256 & 257 It is ordered by the Court that motion to set aside the continuance in this case be and the same is hereby sustained, and that the cause be placed on the docket for call the October term in its regular order.

Stipulation of Counsel.

It is agreed by and between the attorneys for the appellant and appellees in this cause as follows;

Whereas from the stipulation of counsel, which appears on page 7½ of the record in regard to forwarding original maps, there was inadvertently omitted from said stipulation the map introduced in evidence by the appellant in the circuit court of Coahoma County, same being exhibit "4", and bearing the following legends;

"Survey November 18, 22-1913, G. W. Calhoun, Surveyor, 2 South Main St. Memphis, Tenn."

It is therefore agreed by and between the parties to this suit that said map introduced in evidence of the above styled cause may be produced upon the hearing of same in the Supreme Court and that the original of same shall be received and accepted as part of the record in this case.

It further appearing that the map made by L. W. Mashburn has been inadvertently misplaced. It is stipulated and agreed that said L. W. Mashburn may supply said original map and same may be received as a part of the record upon the hearing of this case in the Supreme Court.

Witness our signatures this — day of September, 1916.

WILSON & ARMSTRONG,
Attorneys for Appellant

MAYNARD & FITZGERALD,
Attorneys for Appellees

Filed Oct. 7th, 1916.

GEO. C. MYERS, *Clerk.*

258 In the Supreme Court of the United States, October Term,
A. D. 1916.

RUST LAND & LUMBER COMPANY, Petitioner,

VS.

ED JACKSON, WILL SCOTT, J. F. NICHOLS, A. C. COLEMAN, ZANDERS
PARKER, and ISOM WHITE, Respondents.

*Petition for Writ of Error to the Supreme Court of the State of
Mississippi.*

To the Honorable Edward Douglass White, Chief Justice of the
United States, and to the Honorable James Clark McReynolds,
Associate Justice of the Supreme Court of the United States, and
to the Honorable Supreme Court of the United States:

The petition of the Rust Land & Lumber Company, a corporation
organized and existing under the laws of the State of Wisconsin,
respectfully shows:

1. Hereofore, and on or about the 15th day of March, 1913, an
action of replevin was commenced in the Circuit Court, First Dis-
trict, for the County of Coahoma, State of Mississippi, by Ed Jack-
son, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and
Isom White against your petitioner, Rust Land & Lumber Com-
pany, to recover certain timber, or the value thereof, alleged to have
been wrongfully taken by said defendant from the possession of the
said plaintiffs. To the declaration of the plaintiffs, the defend-
ant, Rust Land & Lumber Company, pleaded the general issue, and
upon the trial the cause was submitted to a jury under the instruc-
tions of the Court and the jury returned a verdict in favor of plain-
tiffs in the sum of \$3,600.00 and judgment was entered in said Cir-
cuit Court in accordance with the verdict of the jury.

2. The issue involved and submitted to a jury in said cause, under
the instructions of the Court, involved the question of the bound-ry
line between the State of Mississippi and the State of Arkansas, the
plaintiffs claiming that the land from which the timber in question
in this suit was cut was in the State of Mississippi and the
259 defendant claiming that said lands were in the State of
Arkansas. It was agreed by stipulations filed in said cause
that the defendant, Rust Land & Lumber Company, was the owner
of certain lands in the State of Arkansas immediately adjoining on
the north the land in question in said cause, and that the plaintiffs
were the owners of certain lands in the State of Mississippi imme-
diately adjoining on the south the land in question in said cause
and on which the timber in question was cut. Prior to the year
1848 the Mississippi River flowed at some point between the lands
now stipulated in said cause to be in the State of Mississippi and to
belong to the plaintiffs, and the land in Arkansas stipulated to belong
to the defendant. The plaintiffs claimed in the trial of said cause

that the lands in question were subsequently added by accretion to the Mississippi shore upon the gradual recession of the waters of the Mississippi River after the Mississippi River in 1848 changed its course and formed a new channel, and the defendants claimed that the lands in question were added by accretion to the Arkansas shore and now belong to it.

3. The defendant, Rust Land & Lumber Company, appealed from the judgment of said Circuit Court to the Supreme Court of Mississippi. While the case was pending in said Supreme Court, and on or about the 6th day of March, 1916, your petitioner, Rust Land & Lumber Company, appellant in said cause then pending in the Supreme Court of Mississippi, moved the Court to continue the cause and stave the trial thereof until a certain cause then pending in the Supreme Court of the United States, known as the State of Arkansas vs. State of Mississippi, number 6 original, on the docket of this Honorable Court was determined, and for cause of said motion showed as follows:

"The issue in controversy in this case is the bound-ry lines between the State of Arkansas and the State of Mississippi, the appellees claiming under a grant from the State of Mississippi and the appellant claiming under a grant from the State of Arkansas.

260 So that, the real question involved in this case, determinative of the rights of the parties, is the true bound-ry line between the said States at the place from which the timber involved in this suit was cut.

"There is pending in the Supreme Court of the United States, and ready for the taking of testimony therein, said cause between the States of Arkansas and Mississippi, which involves only the true bound-ry line between said states at the very point in controversy in this suit, so that, a determination of the bound-ry line by the Supreme Court of the United States, which has the final jurisdiction thereof, will determine the bound-ry line between said States, and whether the land involved is in the State of Arkansas, as claimed by appellees, is the basic contention in this case.

"Wherefore, appellants move the Court to stay the trial of this action until the determination of said bound-ry at the very point in controversy in this case, until such determination by the Supreme Court of the United States has been made.

"In support of said motion appellants file herewith a copy of the original bill in the Supreme Court of the United States, and a copy of the motion for the appointment of a commissioner and a stipulation for the taking of proof therein."

Said Court however refused to continue said cause until the case pending in this court was determined, but, on the contrary, proceeded with the hearing of said cause and on the 23d day of December, 1916, entered an order affirming the judgment of said Circuit Court, but without filing any opinion in said cause, and said judgment of said Supreme Court is a final judgment by the highest court in State of Mississippi in which a hearing could be had.

4. As appears from the motion of appellant, Rust Land & Lumber Company, for the continuance of said cause in the Supreme

Court of Mississippi, your petitioner showed that the question at issue in said cause was a Federal question, to-wit, the bound-ry
261 line between the States of Arkansas and Mississippi, and that this was the issue involved is further shown by the whole record in said cause and in particular by the instructions given by said Circuit Court to the jury under which the verdict of the jury was rendered, a copy of which instructions are attached as an exhibit hereto.

5. The claim of appellant, Rust Land & Lumber Company, which was thus presented and denied by the Supreme Court of Mississippi, was a claim that the lands in question in this cause are situated in the State of Arkansas and that the determination of the true bound-ry line between the States of Arkansas and Mississippi would necessarily establish the validity of this claim; that the determination of the bound-ry line was a Federal question arising under certain Acts of Congress admitting the States of Mississippi and Arkansas to the Union (Stat. at L. Vol. 3, Chap. 23, p. 348 and Vol. 5, Chap. 120, p. 50,) as appeared by the bill in the case pending in said Supreme Court of the United States which was filed in this cause in the Supreme Court of Mississippi; and the construction of these statutes of the United States and the determination of the bound-ry line between said two states was involved in said case of State of Arkansas vs. State of Mississippi so pending in this Honorable Court; but the title, right, privilege or immunity thus claimed by appellant under the statutes of, and an authority exercised under, the United States were denied by the judgment of the said Supreme Court of Mississippi, the highest court in said State in which a decision in said cause could be had.

6. Your petitioner, in support of this petition, respectfully calls the attention of this Honorable Court to the case of *Cisna vs. State of Tennessee*, reported in 242 U. S. 195, in which this Honorable Court continued on its docket a case then pending on error to the Supreme Court of the State of Tennessee, which involved the question of the bound-ry line between the State of Tennessee and the
262 State of Arkansas, on the ground that there was then pending in this Honorable Court another suit between the State of Arkansas and the State of Tennessee in which the same bound-ry question was involved.

A similar situation is presented in this cause. It is conceded that the lands involved in this cause, in which a writ of error to the Supreme Court of Mississippi is prayed by your petitioner, are the same lands that are involved in the suit pending in this Honorable Court and known as the *State of Arkansas vs. State of Mississippi*, and the decision of this latter case by this Honorable Court will determine the bound-ry line between the two States and the title of your petitioner to the land in question in this cause; and if the claim of your petitioner is sustained the decision of the Supreme Court of Mississippi in this cause should be reversed.

Your petitioner, by a petition for rehearing filed in the Supreme Court of Mississippi in this cause, called the attention of said Supreme Court to the decision of this Honorable Court in the case of

Cissna vs. State of Tennessee, supra, but the said Supreme Court of Mississippi nevertheless denied said petition for rehearing. Wherefore, your petitioner claims and says that by a final judgment in said cause in the highest Court in the State of Mississippi in which a decision in said cause could be had, there was a right, title, privilege or immunity which was specially set up and claimed by your petitioner, under and by virtue of the statutes of and authority exercised under the United States, and the decision of said court was against such right, title, privilege or immunity which was so specially set up and claimed by your petitioner; and wherefore, and in accordance with the statute in such case made and provided therefor, your petitioner prays that a writ of error may be issued and that it may be allowed to bring up for review before this Honorable Court the said order and judgment of said Supreme Court of Mississippi for the correction of the errors appearing therein, an assignment whereof is filed with this petition, and that a transcript of the record, 263 proceedings, files and papers in this cause, duly authenticated, may be sent to this Honorable Court.

And your petitioner prays for the allowance of a citation and supersedeas in due form of law, and that execution upon said judgment of the Supreme Court of the State of Mississippi and levy of such execution may be stayed until the further order of this Honorable Court; and that your petitioner may have such other and further relief in the premises as may be just, and your petitioner will ever pray, etc.

RUST LAND & LUMBER COMPANY,
Petitioner,

By STEPHEN A. FOSTER,
HARRY EUGENE KELLY,
Its Attorneys.

HERBERT POPE,
Of Counsel.

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EXHIBIT TO PETITION.

Instructions Given by the Court for the Plaintiffs.

ED JACKSON et al.
vs.
RUST LAND & LUMBER COMPANY.

The court instructs the jury that they can in no event find that the lands from which the timber in controversy was cut are accretions to the Arkansas shore unless the defendant has satisfied them by a preponderance of the evidence that the said land lies north and east of what was the thread of the stream or channel of the Mississippi River at the time of the cut off in 1848 even though they believe from the evidence that the said tract of land is now connected with the Arkansas lands.

The court instructs the jury that should they find from the evidence that the plaintiffs cut the timber in controversy in good faith by authority of King and Anderson, Charles McGhee, Ellen Jackson, who bona fide claimed the lands as accretions to Section 11, T. 28, Range 5 West, in Coahoma County, Mississippi, and the defendant by force or intimidation took the timber away from them, then the plaintiffs have made out a prima facie case and it devolves upon the defendant to show, by a preponderance of the evidence that it is the owner of the land from which the timber was cut before defendant can recover in this case.

The court instructs the jury that unless the Rust Land Company has shown to the satisfaction of the jury, by a preponderance of the evidence, that the lands from which the timber in controversy was cut was a part of the accretions to the land belonging to the Rust Land Company in the State of Arkansas, or was north and
265 east of the channel of the Mississippi river where the cut off 1848 occurred, then they will find for the plaintiffs.

The court instructs the jury that in case they find for the plaintiffs, the form of their verdict shall be as follows, to-wit: We the jury find for the plaintiffs and assess the value of the property levied on at \$— (Filling in the blank with the amount of damages which they may find from the evidence to be the value of the property in controversy).

Instruction Given by the Court for the Defendant.

ED JACKSON et al.

VS.

RUST LAND & LUMBER COMPANY.

The court instructs the jury for the defendant that if they believe from the evidence that 1848 the Mississippi River made a cut off on the Arkansas side, across Horseshoe Bend, leaving an island on the eastern or southern side of the river, with the river between it and the Arkansas shore that the island itself still continued to be and remain in the State of Arkansas, notwithstanding the cut off; and all land that formed to this island by accretions thereto, that is by the gradual and imperceptible formation behind the receding water became and was a part of the said island and still is; and if the jury believes from the evidence that the accretions forming from the island and still is; and if the jury believe from the evidence that the accretions forming from the island and attached thereto continually formed to the south or southeast, around what is known as Dustin Pond, and between it and what is known as Pecan Lake or Old River, and that in this way was formed the land on which
266 was growing the timber which was cut by the plaintiffs and is the subject of this litigation, then the jury will find for the defendant.

The court instructs the jury for the defendant that it is the law

that where the Mississippi recedes slowly and imperceptibly from the land of a riparian owner and the land before covered with water is left dry such land belongs to the riparian owner from whose shores the water recedes, and if the jury believe from the evidence that the land on which was growing the timber in controversy in this suit, which was thus formed by the water receding from the direction of Horseshoe Island, and became thereby attached to the accretions theretofore formed and attached to the said island, then the jury are instructed that both the land and timber belonging to the Rust Land & Lumber Company and the jury will find for the defendant. The court instructs the jury for the defendant that if they believe from the evidence that the body of water shown on the map introduced in evidence in this case, and called Old River or Pecan Lake is between the Mississippi shore and the land on which the timber in controversy in this suit was growing, and that this body of water was the last channel of the river as it dried up between the island and the shore of Mississippi, and that the said lands on which the said timber was growing, is not attached to the Mississippi shore or any accretions formed or attached thereto, then the jury will find for the defendant.

The court instructs the jury for the defendant that even though they may believe from the evidence that the body of water mentioned in the maps and evidenced in this case as Dustin Pond is a part of the old bed of the river, yet if they further believe from the evidence that the land south of it on which the timber was growing which is in controversy in this suit, is entirely separated from
267 the Mississippi shore or any accretions thereto by a body of water approximately three hundred yards wide and very deep, to-wit: from eight to nineteen feet at its deepest, which body of water is known as Pecan Lake or Old River having high banks on the Mississippi side and low sloping banks on the opposite side, and that the said land has never been attached to the Mississippi shore or any of the accretions thereto, but is a part of the accretions coming down from what is known as Horseshoe Island, then the jury are instructed that the said land is a part of the island and the timber thereon was and is the property of the defendant and the jury will find for the defendant.

268 In the Supreme Court of the United States, October Term,
A. D. 1916.

RUST LAND & LUMBER COMPANY, Plaintiff in Error,

vs.

ED JACKSON, WILL SCOTT, J. F. NICHOLS, A. C. COLEMAN, ZANDERS
PARKER, ISOM WHITE, Defendants in Error.

*Assignment of Errors in the Supreme Court of the United States
and Prayer for Reversal.*

And now comes the plaintiff in error in said cause and in connection with its petition for a writ of error shows that in the record and proceedings in said cause in the Supreme Court of Mississippi there is manifest error, and makes the following assignment of said errors which occurred in the hearing and decision of said cause in the Supreme Court of Mississippi, that is to say:

1.

The Supreme Court of Mississippi erred in affirming the judgment of the Circuit Court of Coahoma County.

II.

The Supreme Court of Mississippi erred in refusing to reverse the judgment of said Circuit Court of Coahoma County on the ground that the timber in question was cut from land situated in the State of Arkansas which belonged to plaintiff in error.

III.

The Supreme Court of Mississippi erred in denying the claim of plaintiff in error that the land in question in said cause was in the State of Arkansas and not in the State of Mississippi.

IV.

269 The Supreme Court of Mississippi erred in refusing to continue said cause as requested by plaintiff in error until this Honorable Court had decided the case of State of Arkansas vs. State of Mississippi, number 6 original, pending in this court, in which case is involved the question of the bound-ry line between the State of Arkansas and the State of Mississippi at the same point at which it is involved in this cause.

V.

The Supreme Court of Mississippi erred in affirming the judgment of said Circuit Court of Coahoma County in that an authority exer-

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cised under the United States was drawn in question in said suit and the decision of said court was against the validity of such authority.

VI.

The Supreme Court of Mississippi erred in refusing to recognize the authority of this Honorable Court to determine the question of the bound-ry line between the States of Arkansas and Mississippi then pending in this court in which case the bound-ry line between said States was drawn in question under certain Acts of Congress under which said States were admitted into the Union.

VII.

The Supreme Court of Mississippi erred in not holding that under the statute of the United States the land in question in this cause was in the State of Arkansas and belonged to plaintiff in error.

VIII.

The Supreme Court of Mississippi erred in denying the title, right, privilege or immunity specially set up and claimed by plaintiff in error under and in accordance with the true bound-ry line between the States of Arkansas and Mississippi as fixed and determined by the statutes and authority of the United States and so claimed by plaintiff in error to be a Federal question.

IX.

The Supreme Court of Mississippi erred in failing and refusing to hold that the judgment of said Circuit Court is contrary to the evidence in the record in said cause.

X.

The Supreme Court of Mississippi erred in failing and refusing to hold that said Circuit Court erred in denying the motion of the defendant made therein for a new trial of said cause.

Wherefore, the plaintiff in error prays that the judgment of the Supreme Court of Mississippi affirming the judgment of the Circuit Court of Coahoma County may be reversed, annulled and in all things set aside, and that the plaintiff in error may be restored to all things which it has lost by the occasion of the said judgment.

STEPHEN A. FOSTER,
HARRY EUGENE KELLY,
Att'ys for Plaintiff in Error.

HERBERT POPE,
Of Counsel.

271 Know all Men by these Presents, That we, Rust Land and Lumber Company, as principal, and The Aetna Accident and Liability Company, of Hartford, Connecticut, as sureties, are held and firmly bound unto Ed Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isam White in the full and just sum of Seven Thousand Five Hundred (\$7,500) dollars, to be paid to the said obligees, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of March, in the year of our Lord one thousand nine hundred and seventeen.

Whereas, lately at a term of the Supreme Court of the State of Mississippi in a suit depending in said Court, between Rust Land and Lumber Company and Ed Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isam White a judgment was rendered against the said Rust Land and Lumber Company and the said Rust Land and Lumber Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Ed Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isam White citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Rust Land and Lumber Company shall prosecute said writ of error to effect, and answer all damages and costs if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

RUST LAND & LUMBER CO.,

By CHAS. A. M. SCHLIERHOLZ, *Attorney*. [SEAL.]

THE AETNA ACCIDENT AND LIABILITY
COMPANY,

By JUNIUS L. POWELL, *Attorney in Fact*. [SEAL.]

Sealed and delivered in presence of—

H. S. FROST.

J. B. MCGANAGHY.

Approved by—

J. C. McREYNOLDS,

*Associate Justice of the Supreme
Court of the United States.*

The Ætna Accident and Liability Company, Hartford, Connecticut.

Ætna.

Certificate of Authority of Attorneys-in-fact.

Know All Men by these Presents, That The Ætna Accident and Liability Company, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint Junius L. Powell, of Washington, D. C., its true and lawful Attorneys, with full power and authority hereby conferred to sign, execute and acknowledge individually, any and all bonds, undertakings and other writings obligatory in the nature of a bond on behalf of the Company, and to bind The Ætna Accident and Liability Company thereby as fully and to the same extent as if such Bonds were signed by the duly authorized officers of The Ætna Accident and Liability Company, and all the acts of any one of said Attorneys, pursuant to the authority herein given, are hereby ratified and confirmed.

This power of Attorney is made and executed pursuant to and by authority of the following By-Law adopted by the Board of Directors of The Ætna Accident and Liability Company, at a meeting duly called and held on the 28th day of December, 1911, and as amended by the adoption of Section 5 at a meeting duly called and held on the 25th day of April, 1912.

Article 8. Resident Officers, Attorneys-in-Fact, and Agents.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice Presidents, Resident Assistant Secretary, Attorney-in-Fact or Agent and revoke the power and authority given him.

Section 5. Attorneys-in-Fact may, subject to the provisions and limits named in their Certificate of Authority, execute and deliver and attach the seal of the Company to any and all bonds and undertakings and other writings obligatory in the nature of a bond on behalf of the Company, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Secretary.

In Witness Whereof, The Ætna Accident and Liability Company has caused these presents to be signed by its Secretary, and its cor-

porate seal to be hereto affixed, this 14th day of December, A. D. 1916.

[Seal The Ætna Accident and Liability Company, Hartford, Conn.]

THE ÆTNA ACCIDENT AND LIABILITY
COMPANY,

By D. N. GAGE, *Secretary*.

STATE OF CONNECTICUT,

County of Hartford, ss:

On this 14th day of December, A. D. 1916, before me personally came D. N. Gage to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is Secretary of The Ætna Accident and Liability Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

[Seal James F. McEvitt, Notary Public, State of Connecticut.]

JAMES F. McEVITT,
Notary Public.

My Commission Expires Jan. 31, 1918.

[Endorsed:] Received & filed Mar. 12, 1917. Geo. C. Myers,
Clerk.

272 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable
the Judges of the Supreme Court of the State of Mississippi,
Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Rust Land & Lumber Company and Ed Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker, and Isom White, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege or immunity was claimed under the Constitution, or any treaty or statute of, or com-

mission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under said Constitution, treaty, statute, commission, or authority, a manifest error hath happened to the great damage of the said Rust Land & Lumber Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventh day of March, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

Allowed by

J. C. McREYNOLDS,

*Associate Justice of the Supreme
Court of the United States.*

[Endorsed:] Supreme Court of the United States, October Term, 1916. Rust Land & Lumber Company, Plff in Error, vs. Ed Jackson et al. Writ of Error. Received & filed Mar. 12, 1917. Geo. C. Myers, Clerk.

273 STATE OF MISSISSIPPI,
Hinds County:

I, Geo. C. Myers, Clerk of the Supreme Court of the State of Mississippi, being the Court of said State which has highest, last and final jurisdiction of all pleas and causes pending in the Courts of said State, do hereby certify that the foregoing are full, true and correct copies of the papers, each and all of them, constituting the record in the said Supreme Court of Mississippi in the case of Rust Land & Lumber Company vs. Ed Jackson et. al. No. 17835 on the docket of said Court; all of which are now on file in my office, and which, taken together, constitute the record in said Supreme Court of Mississippi.

Given under my hand and seal of said Supreme Court of Mississippi at Jackson, in the State of Mississippi, this the 3rd day of April, in the year of Our Lord one thousand nine hundred and

seventeen and in the one hundred and forty first year of the Independence of the United States of America.

[Seal State of Mississippi Supreme Court.]

GEO. C. MYERS,
Clerk Supreme Court of Mississippi.

STATE OF MISSISSIPPI,
Hinds County:

I, Geo. C. Myers Clerk of the Supreme Court of the State of Mississippi, do hereby certify that in obedience to the writ of error filed in the above cause I have this day forwarded to the Clerk of the Supreme Court of the United States at Washington District of Columbia, a full, true and correct transcript of all the proceedings in said cause in the Supreme Court of Mississippi together with all the proceedings had in said cause in the Circuit Court of Coahoma County, from which said cause was appealed.

Said transcript has been sent by express prepaid.

Given under my hand with the seal of said Court affixed at office in the City of Jackson, Mississippi, this the 3rd day of April, A. D. 1917.

[Seal State of Mississippi Supreme Court.]

GEO. C. MYERS,
Clerk Supreme Court of Mississippi.

274 In the Supreme Court of the State of Mississippi.

RUST LAND & LUMBER COMPANY

v.

ED. JACKSON et al.

In the preparation of the transcript in this cause, in addition to the matters hereinbefore ordered to be embodied in the record, the Clerk shall embody the motion made for a written opinion and other purposes in an order of the court thereon.

MAYNARD & FITZ GERALD.

275 In the Supreme Court of State of Mississippi.

RUST LAND & LUMBER COMPANY

v.

ED. JACKSON et al.

In the preparation of the transcript in this cause, in addition to the matters hereinbefore ordered to be embodied in the record, the Clerk shall embody the motion made for a written opinion and other purposes in an order of the court thereon.

HERBERT POPE,
Counsel for Rust Land & Lumber Co.

[Endorsed:] 17835. Rust Land & Lum. Co. v. Ed Jackson et al.
Præcipe. Filed M'ch 28/17. Geo. C. Myers, Clerk.

276 UNITED STATES OF AMERICA, ss.:

To Ed Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker, and Isom White, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Mississippi, wherein Rust Land & Lumber Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. McReynolds, Associate Justice of the Supreme Court of the United States, this seventh day of March, in the year of our Lord one thousand nine hundred and seventeen.

J. C. McREYNOLDS,
*Associate Justice of the Supreme
Court of the United States.*

277 On this 13th day of March, in the year of our Lord one thousand nine hundred and seventeen, personally appeared J. C. Taylor before me, the subscriber, P. L. Waldrop, a Notary Public in and for the City of Clarksdale, Coahoma County, Mississippi, and makes oath that he delivered a true copy of the within citation to Ed Jackson, A. C. Coleman, Zanders Parker, and Isom White, and Maynard & Fitzgerald, Attorneys for Ed Jackson, Will Scott, J. F. Nichols, A. Coleman, Zanders Parker and Isom White. After diligence search and inquiry Will Scott and J. F. Nichols not found in Coahoma County, Mississippi.

J. C. TAYLOR,
Deputy Sheriff of Coahoma County, Miss.

Sworn to and subscribed the 13 day of March, A. D. 1917.

P. L. WALDROP,
Notary Public.

[Seal P. L. Waldrop, Notary Public, City of Clarksdale,
Coahoma County, State of Mississippi.]

278 In the Supreme Court of the United States, October Term,
1916.

RUST LAND & LUMBER COMPANY, Petitioner,

vs.

ED JACKSON, WILL SCOTT, J. F. NICHOLS, A. C. COLEMAN, ZANDERS
PARKER, and ISOM WHITE, Respondents.

*Receipt by the Clerk of the Supreme Court of the State of Mississippi
and Acknowledgment of Service of Writ or Error.*

I, George C. Myers, Clerk of the Supreme Court of the State of
Mississippi, acknowledge receipt of the following documents:

(1) Petition to the Chief Justice of the Supreme Court of the
United States and to the Honorable James Clark McReynolds, of
the Rust Land & Lumber Company vs. Ed Jackson, Will Scott, J. F.
Nichols, A. C. Coleman, Zanders Parker and Isom White, respond-
ents, for a writ of error, signed by Salem E. Foster and Harry
Eugene Kelly, attorneys for Plaintiffs in Error, and by Herbert
Pope, of counsel.

(2) Bond of the Rust Land & Lumber Company, with the Aetna
Accident & Liability Company of Hartford, Connecticut, as surety,
in the penalty of \$7,500.00, payable to the respondents to said peti-
tion as obligees, together with certificate of authority of Junius L.
Powell, Attorney in Fact, to sign bonds of this character.

(3) Writ of error directed to the Honorable Judges of the Su-
preme Court of the State of Mississippi, directing the records and
proceedings in said cause to be sent up to the Supreme Court of the
United States, and I hereby waive any further or other service of
said writ of error, acknowledging service thereof.

I will file all of said papers with the record in this Court.

[Seal State of Mississippi Supreme Court.]

GEO. C. MYERS,
Clerk Supreme Court of Miss.

This, March 12, 1917.

(Here follow maps marked pages 282 to 289, inclusive.)

Endorsed on cover: File No. 25,894. Mississippi Supreme Court. Term No. 471. Rust Land & Lumber Company, plaintiff in error, vs. Ed Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isom White. Filed April 9th, 1917. File No. 25,894.

MAPS

TOO

LARGE

FOR

FILMING